OFFICIAL CODE OF GEORGIA ANNOTATED

2015 Supplement

Including Acts of the 2015 Regular Session of the General Assembly

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®

Published Under Authority of the State of Georgia

Volume 29A

2014 Edition

Title 41. Nuisances

Title 42. Penal Institutions

Including Annotations to the Georgia Reports
and the Georgia Appeals Reports

Place in Pocket of Corresponding Volume of Main Set

LexisNexis®
Charlottesville, Virginia

ISBN 978-0-327-11074-3 (set)
ISBN 978-1-63043-193-8

5012031

(Pub.41805)

THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2015 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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TITLE 41

NUISANCES

Chap.

CHAPTER 2

ABATEMENT OF NUISANCES GENERALLY

Sec.

41-2-6. Notice of meeting to determine question of abatement.

Reserved. Repealed by Ga. L. 1981, p. 1739, § 1, effective April 17, 1981.

Editor's notes. — Ga. L. 2015, p. 5, § 41/HB 90, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, reserved the designation of this Code section.

TITLE 42

PENAL INSTITUTIONS

Chap.

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1

INMATE POLICIES

42-1-1. Definitions.

Except as specifically provided otherwise, as used in this title, the term:

(1) "Board" means the Board of Corrections.

(2) "Case plan" means an individualized accountability and behavior change strategy for a probationer, as applicable.

(3) "Commissioner" means the commissioner of corrections.

(4) "Criminal risk factors" means characteristics and behaviors that affect a person's risk for committing future crimes and include, but are not limited to, antisocial behavior, antisocial personality, criminal thinking, criminal associates, having a dysfunctional family, having low levels of employment or education, poor use of leisure and recreation time, and substance abuse.

(5) "Department" means the Department of Corrections.

(6) "Graduated sanctions" means:

(A) Verbal and written warnings;

(B) Increased restrictions and reporting requirements;

(C) Community service or work crews;

(D) Referral to substance abuse or mental health treatment or counseling programs in the community;

(E) Increased substance abuse screening and monitoring;

(F) Electronic monitoring, as such term is defined in Code Section 42-3-111; and

(G) An intensive supervision program.

(7) "Risk and needs assessment" means an actuarial tool, approved by the board and validated on a targeted population, scientifically proven to determine a person's risk to recidivate and to identify criminal risk factors that, when properly addressed, can reduce that person's likelihood of committing future criminal behavior. (Ga. L. 1921, p. 243, §§ 3, 5; Code 1933, §§ 27-504, 27-9903; Ga. L. 2012, p. 899, § 7-1/HB 1176; Ga. L. 2013, p. 222, § 17/HB 349; Ga. L. 2015, p. 422, § 5-62/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "42-3-111" for "42-8-151" in subparagraph (6)(F). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-1-10. Preliminary urine screen drug tests.

(a) Any community supervision officer of the Department of Community Supervision or official or employee of the Department of Corrections who supervises any person covered under the provisions of

paragraphs (1) through (7) of this subsection shall be exempt from the provisions of Chapter 22 of Title 31 for the limited purposes of administering a preliminary urine screen drug test to any person who is:

(1) Incarcerated;

(2) Released as a condition of probation for a felony or misdemeanor;

(3) Released as a condition of conditional release;

(4) Released as a condition of parole;

(5) Released as a condition of provisional release;

(6) Released as a condition of pretrial release; or

(7) Released as a condition of control release.

(b) The Department of Corrections, Department of Community Supervision, and the State Board of Pardons and Paroles shall develop a procedure for the performance of preliminary urine screen drug tests in accordance with the manufacturer's standards for certification. Community supervision officers of the Department of Community Supervision or officials or employees of the Department of Corrections who are supervisors of any person covered under paragraphs (1) through (7) of subsection (a) of this Code section shall be authorized to perform preliminary urine screen drug tests in accordance with such procedure. Such procedure shall include instructions as to a confirmatory test by a licensed clinical laboratory where necessary. (Code 1981, § 42-1-10, enacted by Ga. L. 1992, p. 3234, § 1; Ga. L. 2015, p. 422, § 5-63/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "community supervision officer of the Department of Community Supervision or" for "probation officer, parole officer, or other" near the beginning of the introductory paragraph of subsection (a); in subsection (b), inserted ", Department of Community Supervision," near the beginning of the first sentence, and substituted "Community supervision officers of the Department of Community Supervision or" for "Probation officers, parole officers, or other" at the beginning of the second sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-1-11. Notification of crime victim of impending release of offender from imprisonment.

(a) As used in this Code section, the term:

(1) "Crime" means an act committed in this state which constitutes any violation of Chapter 5 of Title 16, relating to crimes against

persons; Chapter 6 of Title 16, relating to sexual offenses; Article 1, Article 1A, or Article 3 of Chapter 7 of Title 16, relating to burglary, home invasion, and arson; or Article 1 or Article 2 of Chapter 8 of Title 16, relating to offenses involving theft and armed robbery.

(2) "Crime against the person or sexual offense" means any crime provided for in Chapter 5 or 6 of Title 16.

(3) "Custodial authority" means the commissioner of corrections if the offender is in the physical custody of the state, or the sheriff if the offender is incarcerated in a county jail, or the warden if the offender is incarcerated in a county correctional institution.

(4) "Offender" means a person sentenced to a term of incarceration in a state or county correctional institution.

(b) If the identity of a victim of a crime has been verified by the prosecuting attorney, who has, at the request of such victim, mailed a letter to the custodial authority requesting that the victim be notified of a change in the custodial status of an offender, then the custodial authority shall make a good faith effort to notify the victim that the offender is to be released from imprisonment, including release on extended furlough; transferred to work release; released by mandatory release upon expiration of sentence; or has escaped from confinement; or if the offender has died. The good faith effort to notify the victim must occur prior to the release or transfer noted in this subsection. For a victim of a felony crime against the person or sexual offense for which the offender was sentenced to a term of imprisonment of more than 18 months, the good faith effort to notify the victim must occur no later than ten days before the offender's release from imprisonment, transfer to or release from work release, or as soon thereafter as is practical in situations involving emergencies.

(c) The notice given to a victim of a crime against a person or sexual offense shall include the conditions governing the offender's release or transfer and either the identity of the corrections agent or the community supervision officer who will be supervising the offender's release or a means to identify the agency that will be supervising the offender's release. The custodial authority complies with this Code section upon mailing the notice of impending release to the victim at the address which the victim has most recently provided to the custodial authority in writing.

(d) If an offender escapes from imprisonment or incarceration, including from release on extended furlough or work release, the custodial authority shall make all reasonable efforts to notify a victim who has requested notice of the offender's release under subsection (b) of this Code section within six hours after discovering the escape, or as soon thereafter as is practical, and shall also make reasonable efforts to

notify the victim within 24 hours after the offender is apprehended or as soon thereafter as is practical. In emergencies, telephone notification for the victim will be attempted and the results documented in the offender's central file.

(e) All identifying information regarding the victim, including the victim's request and the notice provided by the custodial authority, shall be confidential and accessible only to the victim. It is the responsibility of the victim to provide the custodial authority with a current address.

(f) A designated official in the Department of Corrections, the county correctional facility, and the sheriff's office shall coordinate the receipt of all victim correspondence and shall monitor staff responses to requests for such notification from victims of crime.

(g) The custodial authority shall not be liable for a failure to notify the victim. (Code 1981, § 42-1-11, enacted by Ga. L. 1993, p. 1278, § 1; Ga. L. 1995, p. 385, § 3; Ga. L. 2014, p. 426, § 11/HB 770; Ga. L. 2015, p. 422, § 5-64/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (c), in the first sentence, substituted "shall include" for "must include" near the middle, and substituted "community supervision officer" for "county officer" in the middle. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

ARTICLE 2

SEXUAL OFFENDER REGISTRATION REVIEW BOARD

42-1-12. State Sexual Offender Registry.

(a) As used in this article, the term:

(1) "Address" means the street or route address of the sexual offender's residence. For purposes of this Code section, the term shall not mean a post office box.

(2) "Appropriate official" means:

(A) With respect to a sexual offender who is sentenced to probation without any sentence of incarceration in the state prison system or who is sentenced pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, the Department of Community Supervision;

(B) With respect to a sexual offender who is sentenced to a period of incarceration in a prison under the jurisdiction of the Department of Corrections and who is subsequently released from

prison or placed on probation, the commissioner of corrections or his or her designee;

(C) With respect to a sexual offender who is placed on parole, the chairperson of the State Board of Pardons and Paroles or his or her designee; and

(D) With respect to a sexual offender who is placed on probation through a private probation agency, the director of the private probation agency or his or her designee.

(3) "Area where minors congregate" shall include all public and private parks and recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums, school bus stops, public libraries, and public and community swimming pools.

(4) "Assessment criteria" means the tests that the board members use to determine the likelihood that a sexual offender will commit another criminal offense against a victim who is a minor or commit a dangerous sexual offense.

(5) "Board" means the Sexual Offender Registration Review Board.

(6) "Child care facility" means all public and private pre-kindergarten facilities, child care learning centers, preschool facilities, and long-term care facilities for children.

(6.1) "Child care learning center" shall have the same meaning as set forth in paragraph (2) of Code Section 20-1A-2.

(7) "Church" means a place of public religious worship.

(8) "Conviction" includes a final judgment of conviction entered upon a verdict or finding of guilty of a crime, a plea of guilty, or a plea of nolo contendere. A defendant who is discharged without adjudication of guilt and who is not considered to have a criminal conviction pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, shall be subject to the registration requirements of this Code section for the period of time prior to the defendant's discharge after completion of his or her sentence or upon the defendant being adjudicated guilty. Unless otherwise required by federal law, a defendant who is discharged without adjudication of guilt and who is not considered to have a criminal conviction pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, shall not be subject to the registration requirements of this Code section upon the defendant's discharge.

(9)(A) "Criminal offense against a victim who is a minor" with respect to convictions occurring on or before June 30, 2001, means any criminal offense under Title 16 or any offense under federal

law or the laws of another state or territory of the United States which consists of:

(i) Kidnapping of a minor, except by a parent;

(ii) False imprisonment of a minor, except by a parent;

(iii) Criminal sexual conduct toward a minor;

(iv) Solicitation of a minor to engage in sexual conduct;

(v) Use of a minor in a sexual performance;

(vi) Solicitation of a minor to practice prostitution; or

(vii) Any conviction resulting from an underlying sexual offense against a victim who is a minor.

(B) "Criminal offense against a victim who is a minor" with respect to convictions occurring after June 30, 2001, means any criminal offense under Title 16 or any offense under federal law or the laws of another state or territory of the United States which consists of:

(i) Kidnapping of a minor, except by a parent;

(ii) False imprisonment of a minor, except by a parent;

(iii) Criminal sexual conduct toward a minor;

(iv) Solicitation of a minor to engage in sexual conduct;

(v) Use of a minor in a sexual performance;

(vi) Solicitation of a minor to practice prostitution;

(vii) Use of a minor to engage in any sexually explicit conduct to produce any visual medium depicting such conduct;

(viii) Creating, publishing, selling, distributing, or possessing any material depicting a minor or a portion of a minor's body engaged in sexually explicit conduct;

(ix) Transmitting, making, selling, buying, or disseminating by means of a computer any descriptive or identifying information regarding a child for the purpose of offering or soliciting sexual conduct of or with a child or the visual depicting of such conduct;

(x) Conspiracy to transport, ship, receive, or distribute visual depictions of minors engaged in sexually explicit conduct; or

(xi) Any conduct which, by its nature, is a sexual offense against a victim who is a minor.

(C) For purposes of this paragraph, a conviction for a misdemeanor shall not be considered a criminal offense against a victim who is a minor, and conduct which is adjudicated in juvenile court shall not be considered a criminal offense against a victim who is a minor.

(10)(A) "Dangerous sexual offense" with respect to convictions occurring on or before June 30, 2006, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this paragraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

(i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

(ii) Rape in violation of Code Section 16-6-1;

(iii) Aggravated sodomy in violation of Code Section 16-6-2;

(iv) Aggravated child molestation in violation of Code Section 16-6-4; or

(v) Aggravated sexual battery in violation of Code Section 16-6-22.2.

(B) "Dangerous sexual offense" with respect to convictions occurring between July 1, 2006, and June 30, 2015, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this paragraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

(i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

(ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is less than 14 years of age, except by a parent;

(iii) False imprisonment in violation of Code Section 16-5-41 which involves a victim who is less than 14 years of age, except by a parent;

(iv) Rape in violation of Code Section 16-6-1;

(v) Sodomy in violation of Code Section 16-6-2;

(vi) Aggravated sodomy in violation of Code Section 16-6-2;

(vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;

(viii) Child molestation in violation of Code Section 16-6-4;

(ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;

(x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;

(xii) Incest in violation of Code Section 16-6-22;

(xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;

(xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;

(xv) Sexual exploitation of children in violation of Code Section 16-12-100;

(xvi) Electronically furnishing obscene material to minors in violation of Code Section 16-12-100.1;

(xvii) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;

(xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or

(xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

(B.1) "Dangerous sexual offense" with respect to convictions occurring after June 30, 2015, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this paragraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

(i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

(ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is less than 14 years of age, except by a parent;

(iii) Trafficking a person for sexual servitude in violation of Code Section 16-5-46;

(iv) Rape in violation of Code Section 16-6-1;

(v) Sodomy in violation of Code Section 16-6-2;

(vi) Aggravated sodomy in violation of Code Section 16-6-2;

(vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;

(viii) Child molestation in violation of Code Section 16-6-4;

(ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;

(x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;

(xii) Incest in violation of Code Section 16-6-22;

(xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;

(xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;

(xv) Sexual exploitation of children in violation of Code Section 16-12-100;

(xvi) Electronically furnishing obscene material to minors in violation of Code Section 16-12-100.1;

(xvii) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;

(xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or

(xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

(C) For purposes of this paragraph, a conviction for a misdemeanor shall not be considered a dangerous sexual offense, and conduct which is adjudicated in juvenile court shall not be considered a dangerous sexual offense.

(11) "Institution of higher education" means a private or public community college, state university, state college, or independent postsecondary institution.

(12) "Level I risk assessment classification" means the sexual offender is a low sex offense risk and low recidivism risk for future sexual offenses.

(13) "Level II risk assessment classification" means the sexual offender is an intermediate sex offense risk and intermediate recidivism risk for future sexual offenses and includes all sexual offenders who do not meet the criteria for classification either as a sexually dangerous predator or for Level I risk assessment.

(14) "Minor" means any individual under the age of 18 years and any individual that the sexual offender believed at the time of the offense was under the age of 18 years if such individual was the victim of an offense.

(15) "Public and community swimming pools" includes municipal, school, hotel, motel, or any pool to which access is granted in exchange for payment of a daily fee. The term includes apartment complex pools, country club pools, or subdivision pools which are open only to residents of the subdivision and their guests. This term does not include a private pool or hot tub serving a single-family dwelling and used only by the residents of the dwelling and their guests.

(16) "Required registration information" means:

(A) Name; social security number; age; race; sex; date of birth; height; weight; hair color; eye color; fingerprints; and photograph;

(B) Address, within this state or out of state, and, if applicable in addition to the address, a rural route address and a post office box;

(C) If the place of residence is a motor vehicle or trailer, the vehicle identification number, the license tag number, and a description, including color scheme, of the motor vehicle or trailer;

(D) If the place of residence is a mobile home, the mobile home location permit number; the name and address of the owner of the home; a description, including the color scheme of the mobile home; and, if applicable, a description of where the mobile home is located on the property;

(E) If the place of residence is a manufactured home, the name and address of the owner of the home; a description, including the color scheme of the manufactured home; and, if applicable, a description of where the manufactured home is located on the property;

(F) If the place of residence is a vessel, live-aboard vessel, or houseboat, the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat;

(F.1) If the place of residence is the status of homelessness, information as provided under paragraph (2.1) of subsection (f) of this Code section;

(G) Date of employment, place of any employment, and address of employer;

(H) Place of vocation and address of the place of vocation;

(I) Vehicle make, model, color, and license tag number;

(J) If enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the name, address, and county of each institution, including each campus attended, and enrollment or employment status; and

(K) The name of the crime or crimes for which the sexual offender is registering and the date released from prison or placed on probation, parole, or supervised release.

(17) "Risk assessment classification" means the notification level into which a sexual offender is placed based on the board's assessment.

(18) "School" means all public and private kindergarten, elementary, and secondary schools.

(19) "School bus stop" means a school bus stop as designated by local school boards of education or by a private school.

(20) "Sexual offender" means any individual:

(A) Who has been convicted of a criminal offense against a victim who is a minor or any dangerous sexual offense;

(B) Who has been convicted under the laws of another state or territory, under the laws of the United States, under the Uniform Code of Military Justice, or in a tribal court of a criminal offense against a victim who is a minor or a dangerous sexual offense; or

(C) Who is required to register pursuant to subsection (e) of this Code section.

(21) "Sexually dangerous predator" means a sexual offender:

(A) Who was designated as a sexually violent predator between July 1, 1996, and June 30, 2006; or

(B) Who is determined by the Sexual Offender Registration Review Board to be at risk of perpetrating any future dangerous sexual offense.

(22) "Vocation" means any full-time, part-time, or volunteer employment with or without compensation exceeding 14 consecutive days or for an aggregate period of time exceeding 30 days during any calendar year.

(b) Before a sexual offender who is required to register under this Code section is released from prison or placed on parole, supervised release, or probation, the appropriate official shall:

(1) Inform the sexual offender of the obligation to register, the amount of the registration fee, and how to maintain registration;

(2) Obtain the information necessary for the required registration information;

(3) Inform the sexual offender that, if the sexual offender changes any of the required registration information, other than residence address, the sexual offender shall give the new information to the sheriff of the county with whom the sexual offender is registered within 72 hours of the change of information; if the information is the sexual offender's new residence address, the sexual offender shall give the information to the sheriff of the county with whom the sexual offender last registered within 72 hours prior to moving and to the sheriff of the county to which the sexual offender is moving within 72 hours prior to moving;

(4) Inform the sexual offender that he or she shall also register in any state where he or she is employed, carries on a vocation, or is a student;

(5) Inform the sexual offender that, if he or she changes residence to another state, the sexual offender shall register the new address with the sheriff of the county with whom the sexual offender last registered and that the sexual offender shall also register with a designated law enforcement agency in the new state within 72 hours after establishing residence in the new state;

(6) Obtain fingerprints and a current photograph of the sexual offender;

(7) Require the sexual offender to read and sign a form stating that the obligations of the sexual offender have been explained;

(8) Obtain and forward any information obtained from the clerk of court pursuant to Code Section 42-5-50 to the sheriff's office of the county in which the sexual offender will reside; and

(9) If required by Code Section 42-1-14, place any required electronic monitoring system on the sexually dangerous predator and explain its operation and cost.

(c) The Department of Corrections shall:

(1) Forward to the Georgia Bureau of Investigation a copy of the form stating that the obligations of the sexual offender have been explained;

(2) Forward any required registration information to the Georgia Bureau of Investigation;

(3) Forward the sexual offender's fingerprints and photograph to the sheriff's office of the county where the sexual offender is going to reside;

(4) Inform the board and the prosecuting attorney for the jurisdiction in which a sexual offender was convicted of the impending release of a sexual offender at least eight months prior to such release so as to facilitate compliance with Code Section 42-1-14; and

(5) Keep all records of sexual offenders in a secure facility in accordance with Code Sections 15-1-10, 15-6-62, and 15-6-62.1 until official proof of death of a registered sexual offender; thereafter, the records shall be destroyed.

(c.1) The Department of Community Supervision shall keep all records of sexual offenders in a secure facility in accordance with Code Sections 15-1-10, 15-6-62, and 15-6-62.1 until official proof of death of a registered sexual offender; thereafter, the records shall be destroyed.

(d) No sexual offender shall be released from prison or placed on parole, supervised release, or probation until:

(1) The appropriate official has provided the Georgia Bureau of Investigation and the sheriff's office in the county where the sexual offender will be residing with the sexual offender's required registration information and risk assessment classification level; and

(2) The sexual offender's name has been added to the list of sexual offenders maintained by the Georgia Bureau of Investigation and the sheriff's office as required by this Code section.

(e) Registration pursuant to this Code section shall be required by any individual who:

(1) Is convicted on or after July 1, 1996, of a criminal offense against a victim who is a minor;

(2) Is convicted on or after July 1, 1996, of a dangerous sexual offense;

(3) Has previously been convicted of a criminal offense against a victim who is a minor and may be released from prison or placed on parole, supervised release, or probation on or after July 1, 1996;

(4) Has previously been convicted of a sexually violent offense or dangerous sexual offense and may be released from prison or placed on parole, supervised release, or probation on or after July 1, 1996;

(5) Is a resident of Georgia who intends to reside in this state and who is convicted under the laws of another state or the United States,

under the Uniform Code of Military Justice, or in a tribal court of a sexually violent offense, a criminal offense against a victim who is a minor on or after July 1, 1999, or a dangerous sexual offense on or after July 1, 1996;

(6) Is a nonresident who changes residence from another state or territory of the United States or any other place to Georgia who is required to register as a sexual offender under federal law, military law, tribal law, or the laws of another state or territory or who has been convicted in this state of a criminal offense against a victim who is a minor or any dangerous sexual offense;

(7) Is a nonresident sexual offender who enters this state for the purpose of employment or any other reason for a period exceeding 14 consecutive days or for an aggregate period of time exceeding 30 days during any calendar year regardless of whether such sexual offender is required to register under federal law, military law, tribal law, or the laws of another state or territory; or

(8) Is a nonresident sexual offender who enters this state for the purpose of attending school as a full-time or part-time student regardless of whether such sexual offender is required to register under federal law, military law, tribal law, or the laws of another state or territory.

(f) Any sexual offender required to register under this Code section shall:

(1) Provide the required registration information to the appropriate official before being released from prison or placed on parole, supervised release, or probation;

(2) Register in person with the sheriff of the county in which the sexual offender resides within 72 hours after the sexual offender's release from prison or placement on parole, supervised release, probation, or entry into this state;

(2.1) In the case of a sexual offender whose place of residence is the status of homelessness, in lieu of the requirements of paragraph (2) of this subsection, register in person with the sheriff of the county in which the sexual offender sleeps within 72 hours after the sexual offender's release from prison or placement on parole, supervised release, probation, or entry into this state and provide the location where he or she sleeps;

(3) Maintain the required registration information with the sheriff of each county in which the sexual offender resides or sleeps;

(4) Renew the required registration information with the sheriff of the county in which the sexual offender resides or sleeps by reporting

in person to the sheriff within 72 hours prior to such offender's birthday each year to be photographed and fingerprinted;

(5) Update the required registration information with the sheriff of the county in which the sexual offender resides within 72 hours of any change to the required registration information, other than where he or she resides or sleeps if such person is homeless. If the information is the sexual offender's new address, the sexual offender shall give the information regarding the sexual offender's new address to the sheriff of the county in which the sexual offender last registered within 72 hours prior to any change of address and to the sheriff of the county to which the sexual offender is moving within 72 hours prior to establishing such new address. If the sexual offender is homeless and the information is the sexual offender's new sleeping location, within 72 hours of changing sleeping locations, the sexual offender shall give the information regarding the sexual offender's new sleeping location to the sheriff of the county in which the sexual offender last registered, and if the county has changed, to the sheriff of the county to which the sexual offender has moved; and

(6) Continue to comply with the registration requirements of this Code section for the entire life of the sexual offender, excluding ensuing periods of incarceration.

(g) A sexual offender required to register under this Code section may petition to be released from the registration requirements and from the residency or employment restrictions of this Code section in accordance with the provisions of Code Section 42-1-19.

(h)(1) The appropriate official or sheriff shall, within 72 hours after receipt of the required registration information, forward such information to the Georgia Bureau of Investigation. Once the data is entered into the Criminal Justice Information System by the appropriate official or sheriff, the Georgia Crime Information Center shall notify the sheriff of the sexual offender's county of residence, either permanent or temporary, the sheriff of the county of employment, and the sheriff of the county where the sexual offender attends an institution of higher education within 24 hours of entering the data or any change to the data.

(2) The Georgia Bureau of Investigation shall:

(A) Transmit all information, including the conviction data and fingerprints, to the Federal Bureau of Investigation within 24 hours of entering the data;

(B) Establish operating policies and procedures concerning record ownership, quality, verification, modification, and cancellation; and

(C) Perform mail out and verification duties as follows:

(i) Send each month Criminal Justice Information System network messages to sheriffs listing sexual offenders due for verification;

(ii) Create a photo image file from original entries and provide such entries to sheriffs to assist in sexual offender identification and verification;

(iii) Mail a nonforwardable verification form to the last reported address of the sexual offender within ten days prior to the sexual offender's birthday;

(iv) If the sexual offender changes residence to another state, notify the law enforcement agency with which the sexual offender shall register in the new state; and

(v) Maintain records required under this Code section.

(i) The sheriff's office in each county shall:

(1) Prepare and maintain a list of all sexual offenders and sexually dangerous predators residing in each county. Such list shall include the sexual offender's name; age; physical description; address; crime of conviction, including conviction date and the jurisdiction of the conviction; photograph; and the risk assessment classification level provided by the board, and an explanation of how the board classifies sexual offenders and sexually dangerous predators;

(2) Electronically submit and update all information provided by the sexual offender within two business days to the Georgia Bureau of Investigation in a manner prescribed by the Georgia Bureau of Investigation;

(3) Maintain and provide a list, manually or electronically, of every sexual offender residing in each county so that it may be available for inspection:

(A) In the sheriff's office;

(B) In any county administrative building;

(C) In the main administrative building for any municipal corporation;

(D) In the office of the clerk of the superior court so that such list is available to the public; and

(E) On a website maintained by the sheriff of the county for the posting of general information;

(4) Update the public notices required by paragraph (3) of this subsection within two business days of the receipt of such information;

(5) Inform the public of the presence of sexual offenders in each community;

(6) Update the list of sexual offenders residing in the county upon receipt of new information affecting the residence address of a sexual offender or upon the registration of a sexual offender moving into the county by virtue of release from prison, relocation from another county, conviction in another state, federal court, military tribunal, or tribal court. Such list, and any additions to such list, shall be delivered, within 72 hours of updating the list of sexual offenders residing in the county, to all schools or institutions of higher education located in the county;

(7) Within 72 hours of the receipt of changed required registration information, notify the Georgia Bureau of Investigation through the Criminal Justice Information System of each change of information;

(8) Retain the verification form stating that the sexual offender still resides at the address last reported;

(9) Enforce the criminal provisions of this Code section. The sheriff may request the assistance of the Georgia Bureau of Investigation to enforce the provisions of this Code section;

(10) Cooperate and communicate with other sheriffs' offices in this state and in the United States to maintain current data on the location of sexual offenders;

(11) Determine the appropriate time of day for reporting by sexual offenders, which shall be consistent with the reporting requirements of this Code section;

(12) If required by Code Section 42-1-14, place any electronic monitoring system on the sexually dangerous predator and explain its operation and cost;

(13) Provide current information on names and addresses of all registered sexual offenders to campus police with jurisdiction for the campus of an institution of higher education if the campus is within the sheriff's jurisdiction; and

(14) Collect the annual $250.00 registration fee from the sexual offender and transmit such fees to the state for deposit into the general fund.

(j)(1) The sheriff of the county where the sexual offender resides or last registered shall be the primary law enforcement official charged with communicating the whereabouts of the sexual offender and any changes in required registration information to the sheriff's office of the county or counties where the sexual offender is employed, volunteers, attends an institution of higher education, or moves.

(2) The sheriff's office may post the list of sexual offenders in any public building in addition to those locations enumerated in subsection (h) of this Code section.

(k) The Georgia Crime Information Center shall create the Criminal Justice Information System network transaction screens by which appropriate officials shall enter original data required by this Code section. Screens shall also be created for sheriffs' offices for the entry of record confirmation data; employment; changes of residence, institutions of higher education, or employment; or other pertinent data to assist in sexual offender identification.

(l)(1) On at least an annual basis, the Department of Education shall obtain from the Georgia Bureau of Investigation a complete list of the names and addresses of all registered sexual offenders and shall provide access to such information, accompanied by a hold harmless provision, to each school in this state. In addition, the Department of Education shall provide information to each school in this state on accessing and retrieving from the Georgia Bureau of Investigation's website a list of the names and addresses of all registered sexual offenders.

(2) On at least an annual basis, the Department of Early Care and Learning shall provide current information to all child care programs regulated pursuant to Code Section 20-1A-10 and to all child care learning centers, day-care, group day-care, and family day-care programs regulated pursuant to Code Section 49-5-12 on accessing and retrieving from the Georgia Bureau of Investigation's website a list of the names and addresses of all registered sexual offenders and shall include, on a continuing basis, such information with each application for licensure, commissioning, or registration for early care and education programs.

(3) On at least an annual basis, the Department of Human Services shall provide current information to all long-term care facilities for children on accessing and retrieving from the Georgia Bureau of Investigation's website a list of the names and addresses of all registered sexual offenders.

(m) Within ten days of the filing of a defendant's discharge and exoneration of guilt pursuant to Article 3 of Chapter 8 of this title, the clerk of court shall transmit the order of discharge and exoneration to the Georgia Bureau of Investigation and any sheriff maintaining records required under this Code section.

(n) Any individual who:

(1) Is required to register under this Code section and who fails to comply with the requirements of this Code section;

(2) Provides false information; or

(3) Fails to respond directly to the sheriff of the county where he or she resides or sleeps within 72 hours prior to such individual's birthday

shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than 30 years; provided, however, that upon the conviction of the second offense under this subsection, the defendant shall be punished by imprisonment for not less than five nor more than 30 years.

(o) The information collected pursuant to this Code section shall be treated as private data except that:

(1) Such information may be disclosed to law enforcement agencies for law enforcement purposes;

(2) Such information may be disclosed to government agencies conducting confidential background checks; and

(3) The Georgia Bureau of Investigation or any sheriff maintaining records required under this Code section shall, in addition to the requirements of this Code section to inform the public of the presence of sexual offenders in each community, release such other relevant information collected under this Code section that is necessary to protect the public concerning sexual offenders required to register under this Code section, except that the identity of a victim of an offense that requires registration under this Code section shall not be released.

(p) The Board of Public Safety is authorized to promulgate rules and regulations necessary for the Georgia Bureau of Investigation and the Georgia Crime Information Center to implement and carry out the provisions of this Code section.

(q) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this article.

(r) Any violation of this Code section is declared to be a continuous offense, and venue for such offense shall be considered to have been committed in any county where:

(1) A sexual offender is required to register;

(2) An accused fails to comply with the requirements of this Code section; or

(3) An accused provides false information. (Code 1981, § 42-1-12, enacted by Ga. L. 1996, p. 1520, § 1; Ga. L. 1997, p. 143, § 42; Ga. L. 1997, p. 380, § 1; Ga. L. 1998, p. 831, § 1; Ga. L. 1999, p. 81, § 42;

Ga. L. 1999, p. 837, § 1; Ga. L. 2001, p. 1004, § 1; Ga. L. 2002, p. 571, § 1; Ga. L. 2002, p. 1400, §§ 1, 2; Ga. L. 2003, p. 140, § 42; Ga. L. 2003, p. 281, § 1; Ga. L. 2004, p. 645, § 5; Ga. L. 2004, p. 1064, §§ 1, 2; Ga. L. 2005, p. 453, § 1/HB 106; Ga. L. 2006, p. 72, § 42/SB 465; Ga. L. 2006, p. 379, § 24/HB 1059; Ga. L. 2008, p. 680, §§ 2, 3/SB 1; Ga. L. 2008, p. 810, §§ 3, 4/SB 474; Ga. L. 2009, p. 8, § 42/SB 46; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2010, p. 167, § 1/HB 651; Ga. L. 2010, p. 168, §§ 5, 6, 7, 8, 9, 10, 11/HB 571; Ga. L. 2011, p. 752, § 42/HB 142; Ga. L. 2012, p. 173, § 2-9/HB 665; Ga. L. 2013, p. 135, § 10/HB 354; Ga. L. 2015, p. 422, § 5-65/HB 310; Ga. L. 2015, p. 675, § 4-2/SB 8.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, substituted "Department of Community Supervision" for "Division of Probation of the Department of Corrections" in subparagraph (a)(2)(A); and added subsection (c.1). See editor's note for applicability. The second 2015 amendment, effective July 1, 2015, substituted "occurring between July 1, 2006, and June 30, 2015," for "occurring after June 30, 2006," in the introductory paragraph of subparagraph (a)(10)(B); deleted "prevention" following "child exploitation" in division (a)(10)(B)(xvii); and added subparagraph (a)(10)(B.1) and subsection (r).

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

Ga. L. 2015, p. 675, § 1-1/SB 8, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Safe Harbor/Rachel's Law Act.'"

Ga. L. 2015, p. 675, § 1-2/SB 8, not codified by the General Assembly, provides that: "(a) The General Assembly finds that arresting, prosecuting, and incarcerating victimized children serves to retraumatize children and increases their feelings of low self esteem, making the process of recovery more difficult. The General Assembly acknowledges that both federal and state laws recognize that sexually exploited children are the victims of crime and should be treated as victims. The General Assembly finds that sexually exploited children deserve the protection of child welfare services, including family support, crisis intervention, counseling, and emergency housing services. The General Assembly finds that it is necessary and appropriate to adopt uniform and reasonable assessments and regulations to help address the deleterious secondary effects, including but not limited to, prostitution and sexual exploitation of children, associated with adult entertainment establishments that allow the sale, possession, or consumption of alcohol on premises and that provide to their patrons performances and interaction involving various forms of nudity. The General Assembly finds that a correlation exists between adult live entertainment establishments and the sexual exploitation of children. The General Assembly finds that adult live entertainment establishments present a point of access for children to come into contact with individuals seeking to sexually exploit children. The General Assembly further finds that individuals seeking to exploit children utilize adult live entertainment establishments as a means of locating children for the purpose of sexual exploitation. The General Assembly acknowledges that many local governments in this state and in other states found deleterious secondary effects of adult entertainment establishments are exacerbated by the sale, possession, or consumption of alcohol in such establishments.

"(b) The purpose of this Act is to protect a child from further victimization after he or she is discovered to be a sexually exploited child by ensuring that a child protective response is in place in this state. The purpose and intended effect of

this Act in imposing assessments and regulations on adult entertainment establishments is not to impose a restriction on the content or reasonable access to any materials or performances protected by the First Amendment of the United States Constitution or Article I, Section I, Paragraph V of the Constitution of this state."

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Motion to enforce terms inadequate to address regulatory mechanism. — Defendant's motion to enforce the terms and conditions of the defendant's sentence was ineffectual to address the regulatory mechanism requiring the defendant to register as a sex offender. Smith v. State, 328 Ga. App. 885, 763 S.E.2d 269 (2014).

Evidence insufficient to prove failure to register. — Defendant's conviction for failure to register as a sex offender had to be reversed because a rational trier of fact could not have found beyond a reasonable doubt from the evidence presented that the defendant violated the sex offender registration requirements of O.C.G.A. § 42-1-12 as the state's sole witness did not testify that the witness was working when the defendant was required to register or that the defendant could not have registered with someone else. Davis v. State, 330 Ga. App. 118, 766 S.E.2d 566 (2014).

Registration Not Required

Misdemeanor conviction for interference with child custody did not require registration. — Trial court properly permanently enjoined the Georgia Department of Corrections from requiring the defendant to register as a sex offender because the defendant's State of Alabama conviction for interference with custody of a child was a misdemeanor conviction that did not trigger the sex offender registration requirement under Georgia law. Owens v. Urbina, 296 Ga. 256, 765 S.E.2d 909 (2014).

42-1-14. Risk assessment classification; classification as "sexually dangerous predator"; electronic monitoring.

(a)(1) The board shall determine the likelihood that a sexual offender will engage in another crime against a victim who is a minor or a dangerous sexual offense. The board shall make such determination for any sexual offender convicted on or after July 1, 2006, of a criminal offense against a victim who is a minor or a dangerous sexual offense and for any sexual offender incarcerated on July 1, 2006, but convicted prior to July 1, 2006, of a criminal offense against a victim who is a minor. Any sexual offender who changes residence from another state or territory of the United States or any other place to this state and who is not already designated under Georgia law as a sexually dangerous predator, sexual predator, or sexually violent predator shall have his or her required registration information forwarded by the sheriff of his or her county of registration to the board for the purpose of risk assessment classification. The board shall also make such determination upon the request of a superior court judge for purposes of considering a petition to be released from

registration restrictions or residency or employment restrictions as provided for in Code Section 42-1-19.

(2) A sexual offender shall be placed into Level I risk assessment classification, Level II risk assessment classification, or sexually dangerous predator classification based upon the board's assessment criteria and information obtained and reviewed by the board. The sexual offender may provide the board with information, including, but not limited to, psychological evaluations, sexual history polygraph information, treatment history, and personal, social, educational, and work history, and may agree to submit to a psychosexual evaluation or sexual history polygraph conducted by the board. If the sexual offender has undergone treatment or supervision through the Department of Corrections or the Department of Community Supervision, such treatment records shall also be submitted to the board for evaluation. The prosecuting attorney shall provide the board with any information available to assist the board in rendering an opinion, including, but not limited to, criminal history and records related to previous criminal history. The board shall utilize the Georgia Bureau of Investigation to assist it in obtaining information relative to its evaluation of sexual offenders and the Georgia Bureau of Investigation shall provide the board with information as requested by the board. The board shall be authorized to obtain information from supervision records of the State Board of Pardons and Paroles regarding such sexual offender, but such records shall remain confidential state secrets in accordance with Code Section 42-9-53 and shall not be made available to any other person or entity or be subject to subpoena unless declassified by the State Board of Pardons and Paroles. The clerk of court shall send a copy of the sexual offender's conviction to the board and notify the board that a sexual offender's evaluation will need to be performed. The board shall render its recommendation for risk assessment classification within:

(A) Sixty days of receipt of a request for an evaluation if the sexual offender is being sentenced pursuant to subsection (c) of Code Section 17-10-6.2;

(B) Six months prior to the sexual offender's proposed release from confinement if the offender is incarcerated;

(C) Sixty days of receipt of the required registration information from the sheriff when the sexual offender changes residence from another state or territory of the United States or any other place to this state and is not already classified;

(D) Sixty days if the sexual offender is sentenced to a probated or suspended sentence; and

(E) Ninety days if such classification is requested by the court pursuant to a petition filed under Code Section 42-1-19.

(3) The board shall notify the sexual offender by first-class mail of its determination of risk assessment classification and shall send a copy of such classification to the Georgia Bureau of Investigation, the Department of Corrections, the Department of Community Supervision, the sheriff of the county where the sexual offender is registered, and the sentencing court, if applicable.

(b) If the board determines that a sexual offender should be classified as a Level II risk assessment classification or as a sexually dangerous predator, the sexual offender may petition the board to reevaluate his or her classification. To file a petition for reevaluation, the sexual offender shall be required to submit his or her written petition for reevaluation to the board within 30 days from the date of the letter notifying the sexual offender of his or her classification. The sexual offender shall have 60 days from the date of the notification letter to submit information as provided in subsection (a) of this Code section in support of the sexual offender's petition for reevaluation. If the sexual offender fails to submit the petition or supporting documents within the time limits provided, the classification shall be final. The board shall notify the sexual offender by first-class mail of its decision on the petition for reevaluation of risk assessment classification and shall send a copy of such notification to the Georgia Bureau of Investigation, the Department of Corrections, the Department of Community Supervision, the sheriff of the county where the sexual offender is registered, and the sentencing court, if applicable.

(c) A sexual offender who is classified by the board as a Level II risk assessment classification or as a sexually dangerous predator may file a petition for judicial review of his or her classification within 30 days of the date of the notification letter or, if the sexual offender has requested reevaluation pursuant to subsection (b) of this Code section, within 30 days of the date of the letter denying the petition for reevaluation. The petition for judicial review shall name the board as defendant, and the petition shall be filed in the superior court of the county where the offices of the board are located. Within 30 days after service of the appeal on the board, the board shall submit a summary of its findings to the court and mail a copy, by first-class mail, to the sexual offender. The findings of the board shall be considered prima-facie evidence of the classification. The court shall also consider any relevant evidence submitted, and such evidence and documentation shall be mailed to the parties as well as submitted to the court. The court may hold a hearing to determine the issue of classification. The court may uphold the classification of the board, or, if the court finds by a preponderance of the evidence that the sexual offender is not placed in the appropriate classification level, the court shall place the sexual offender in the appropriate risk assessment classification. The court's determination shall be forwarded by the clerk of the court to the board,

the sexual offender, the Georgia Bureau of Investigation, and the sheriff of the county where the sexual offender is registered.

(d) Any individual who was classified as a sexually violent predator prior to July 1, 2006, shall be classified as a sexually dangerous predator on and after July 1, 2006.

(e) Any sexually dangerous predator shall be required to wear an electronic monitoring system that shall have, at a minimum:

(1) The capacity to locate and record the location of a sexually dangerous predator by a link to a global positioning satellite system;

(2) The capacity to timely report or record a sexually dangerous predator's presence near or within a crime scene or in a prohibited area or the sexually dangerous predator's departure from specific geographic locations; and

(3) An alarm that is automatically activated and broadcasts the sexually dangerous predator's location if the global positioning satellite monitor is removed or tampered with by anyone other than a law enforcement official designated to maintain and remove or replace the equipment.

Such electronic monitoring system shall be worn by a sexually dangerous predator for the remainder of his or her natural life. The sexually dangerous predator shall pay the cost of such system to the Department of Community Service if the sexually dangerous predator is under probation or parole supervision and to the sheriff after the sexually dangerous predator completes his or her term of probation and parole or if the sexually dangerous predator has moved to this state from another state, territory, or country. The electronic monitoring system shall be placed upon the sexually dangerous predator prior to his or her release from confinement. If the sexual offender is not in custody, within 72 hours of the decision classifying the sexual offender as a sexually dangerous predator in accordance with subsection (b) of this Code section, the sexually dangerous predator shall report to the sheriff of the county of his or her residence for purposes of having the electronic monitoring system placed on the sexually dangerous predator.

(f) In addition to the requirements of registration for all sexual offenders, a sexually dangerous predator shall report to the sheriff of the county where such predator resides six months following his or her birth month and update or verify his or her required registration information. (Code 1981, § 42-1-14, enacted by Ga. L. 2006, p. 379, § 24/HB 1059; Ga. L. 2010, p. 168, § 12/HB 571; Ga. L. 2010, p. 878, § 42/HB 1387; Ga. L. 2011, p. 752, § 42/HB 142; Ga. L. 2012, p. 985, § 3/HB 895; Ga. L. 2013, p. 1056, § 1/HB 122; Ga. L. 2015, p. 422, § 5-66/HB 310.)

The 2015 amendment, effective July 1, 2015, in paragraph (a)(2), in the third sentence, inserted "or supervision" and inserted "or the Department of Community Supervision", inserted "State" preceding "Board of Pardons and Paroles" near the beginning of the sixth sentence; in paragraph (a)(3), substituted "sexual offender" for "sex offender" near the beginning, and inserted "the Department of Community Supervision," in the middle; in subsection (b), inserted "the Department of Community Supervision," near the end of the last sentence; and, in the second sentence of the undesignated language at the end of subsection (e), substituted "Department of Community Service if the sexually dangerous predator is under probation or parole supervision" for "Department of Corrections if the sexually dangerous predator is on probation; to the State Board of Pardons and Paroles if the sexually dangerous predator is on parole;". See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-1-19. Petition for release from registration requirements.

(a) An individual required to register pursuant to Code Section 42-1-12 may petition a superior court for release from registration requirements and from any residency or employment restrictions of this article if the individual:

(1) Has completed all prison, parole, supervised release, and probation for the offense which required registration pursuant to Code Section 42-1-12; and

(A) Is confined to a hospice facility, skilled nursing home, residential care facility for the elderly, or nursing home;

(B) Is totally and permanently disabled as such term is defined in Code Section 49-4-80; or

(C) Is otherwise seriously physically incapacitated due to illness or injury;

(2) Was sentenced for a crime that became punishable as a misdemeanor on or after July 1, 2006, and meets the criteria set forth in subparagraphs (c)(1)(A) through (c)(1)(F) of Code Section 17-10-6.2;

(3) Is required to register solely because he or she was convicted of kidnapping or false imprisonment involving a minor and such offense did not involve a sexual offense against such minor or an attempt to commit a sexual offense against such minor. For purposes of this paragraph, the term "sexual offense" means any offense listed in division (a)(10)(B)(i) or (a)(10)(B)(iv) through (a)(10)(B)(xix) of Code Section 42-1-12; or

(4) Has completed all prison, parole, supervised release, and probation for the offense which required registration pursuant to Code Section 42-1-12 and meets the criteria set forth in subparagraphs (c)(1)(A) through (c)(1)(F) of Code Section 17-10-6.2.

(b)(1) A petition for release pursuant to this Code section shall be filed in the superior court of the jurisdiction in which the individual was convicted; provided, however, that if the individual was not convicted in this state, such petition shall be filed in the superior court of the county where the individual resides.

(2) Such petition shall be served on the district attorney of the jurisdiction where the petition is filed, the sheriff of the county where the petition is filed, and the sheriff of the county where the individual resides. Service on the district attorney and sheriff may be had by mailing a copy of the petition with a proper certificate of service.

(3) If a petition for release is denied, another petition for release shall not be filed within a period of two years from the date of the final order on a previous petition.

(c)(1) An individual who meets the requirements of paragraph (1), (2), or (3) of subsection (a) of this Code section shall be considered for release from registration requirements and from residency or employment restrictions.

(2) An individual who meets the requirements of paragraph (4) of subsection (a) of this Code section may be considered for release from registration requirements and from residency or employment restrictions only if:

(A) Ten years have elapsed since the individual completed all prison, parole, supervised release, and probation for the offense which required registration pursuant to Code Section 42-1-12; or

(B) The individual has been classified by the board as a Level I risk assessment classification, provided that if the board has not done a risk assessment classification for such individual, the court shall order such classification to be completed prior to considering the petition for release.

(d) In considering a petition pursuant to this Code section, the court may consider:

(1) Any evidence introduced by the petitioner;

(2) Any evidence introduced by the district attorney or sheriff; and

(3) Any other relevant evidence.

(e) The court shall hold a hearing on the petition if requested by the petitioner.

(f) The court may issue an order releasing the individual from registration requirements or residency or employment restrictions, in whole or part, if the court finds by a preponderance of the evidence that the individual does not pose a substantial risk of perpetrating any

future dangerous sexual offense. The court may release an individual from such requirements or restrictions for a specific period of time. The court shall send a copy of any order releasing an individual from any requirements or restrictions to the sheriff and the district attorney of the jurisdiction where the petition is filed, to the sheriff of the county where the individual resides, to the Department of Corrections, to the Department of Community Supervision, and to the Georgia Bureau of Investigation. (Code 1981, § 42-1-19, enacted by Ga. L. 2010, p. 168, § 15/HB 571; Ga. L. 2015, p. 422, § 5-67/HB 310.)

The 2015 amendment, effective July 1, 2015, inserted "to the Department of Community Supervision," in the last sentence of subsection (f). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

Second petition for release from registration improperly dismissed. — Because O.C.G.A. § 42-1-19 barred a person on the sex offender registry from filing a second petition for release from registration requirements within two years from a final order on a previous petition, if the first petition for relief was denied, but the defendant's first petition was not denied as the petition was treated as either a voluntary dismissal or, alternatively, a dismissal for failure to prosecute, neither of which operated as an adjudication on the merits of the first petition, the trial court erred by dismissing the defendant's second petition for release from sex offender registration requirements as that petition was not filed within two years of the previous petition. Hawkins v. State, 330 Ga. App. 547, 768 S.E.2d 523 (2015).

CHAPTER 2

BOARD AND DEPARTMENT OF CORRECTIONS

42-2-11. Powers and duties of board; adoption of rules and regulations.

(a) The board shall establish the general policy to be followed by the department and shall have the duties, powers, authority, and jurisdiction provided for in this title or as otherwise provided by law.

(b) The board is authorized to adopt, establish, and promulgate rules and regulations governing the transaction of the business of the penal

system of the state by the department and the commissioner and the administration of the affairs of the penal system in the different penal institutions coming under its authority and supervision and shall make the institutions as self-supporting as possible.

(c)(1) The board shall adopt rules governing the assignment, housing, working, feeding, clothing, treatment, discipline, rehabilitation, training, and hospitalization of all inmates coming under its custody.

(2)(A) As used in this paragraph, the term:

(i) "Evidence based practices" means supervision policies, procedures, programs, and practices that scientific research demonstrates reduce recidivism among individuals who are under some form of correctional supervision.

(ii) "Recidivism" means returning to prison or jail within three years of being placed on probation or being discharged or released from a department or jail facility.

(B) The board shall adopt rules and regulations governing the management and treatment of inmates coming under its custody to ensure that evidence based practices, including the use of a risk and needs assessment and any other method the board deems appropriate, guide decisions related to preparing inmates for release into the community. The board shall require the department to collect and analyze data and performance outcomes relevant to the level and type of treatment given to an inmate and the outcome of the treatment on his or her recidivism and prepare an annual report regarding such information which shall be submitted to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House Committee on State Properties and the Senate State Institutions and Property Committee.

(d) The board shall also adopt rules and regulations governing the conduct and the welfare of the employees of the state institutions operating under its authority and of the county correctional institutions and correctional facilities or programs operating under its supervision. It shall prescribe the working hours and conditions of work for employees in the office of the commissioner and in institutions operating under the authority of the board.

(e) The board shall also adopt rules and regulations governing the negotiation and execution of any contract for the land acquisition, design, construction, operation, maintenance, use, lease, or management of a state correctional institution or for any services pertaining to the custody, care, and control of inmates or other functions as are related to the discharge of these responsibilities.

(f) The board shall adopt rules:

(1) Providing for the transfer to a higher security facility of each inmate who commits battery or aggravated assault against a correctional officer while in custody; provided, however, that this provision shall not apply in instances where the inmate is already incarcerated in a maximum security facility; and

(2) Specifying the procedures for offering department assistance to employees who are victims of battery or aggravated assault by inmates in filing criminal charges or civil actions against their assailants, including procedures for posting notices that such assistance is available to any employee who is subjected to battery or aggravated assault by an inmate, but not including legal representation of such employees.

(g) All rules and regulations adopted pursuant to this Code section shall be adopted, established, promulgated, amended, repealed, filed, and published in accordance with the applicable provisions and procedure as set forth in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The courts shall take judicial notice of any such rules or regulations.

(h) As used in this Code section, the words "rules and regulations" shall have the same meaning as the word "rule" is defined in paragraph (6) of Code Section 50-13-2.

(i) The board shall have the authority to request bids and proposals and to enter into contracts for the operation of probation detention centers by private companies and entities for the confinement of probationers under Code Section 42-8-35.4 and probation diversion centers for the confinement of probationers under Code Section 42-8-35.5. The board shall have the authority to adopt, establish, and promulgate rules and regulations for the operation of probation detention and probation diversion centers by private companies and entities. (Ga. L. 1956, p. 161, § 11; Ga. L. 1969, p. 598, § 1; Ga. L. 1978, p. 1647, § 1; Ga. L. 1983, p. 3, §§ 31, 60; Ga. L. 1983, p. 507, § 3; Ga. L. 1996, p. 691, § 2; Ga. L. 1996, p. 726, § 1; Ga. L. 2006, p. 727, § 1/SB 44; Ga. L. 2012, p. 899, § 7-4/HB 1176; Ga. L. 2013, p. 141, § 42/HB 79; Ga. L. 2015, p. 422, § 5-68/HB 310.)

The 2015 amendment, effective July 1, 2015, in subparagraph (c)(2)(B), in the first sentence, substituted "inmates coming under its custody" for "inmates and probationers" near the middle, and deleted "and managing probationers in the community" at the end, and deleted "or probationer" following "an inmate" near the middle of the second sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-2-15. Employee benefit fund.

(a) As used in this Code section, the term:

(1) "Employee" means a full-time or part-time employee of the department or an employee serving under contract with the department.

(2) "Employee benefit fund" means an account containing the facility's profits generated from vending services maintained by a local facility.

(3) "Executive director of the facility" means the warden, superintendent, or such other head of a facility.

(4) "Facility" means a prison, institution, detention center, diversion center, or such other similar property under the jurisdiction or operation of the department.

(5) "Vending services" means one or more vending machines in a location easily accessible by employees, which services may also be accessible by members of the general public, but which vending machines do not require a manager or attendant for the purpose of purchasing food or drink items. Vending services shall be for the provision of snack or food items or nonalcoholic beverages and shall not include any tobacco products or alcoholic beverages.

(b) It is the intent of the General Assembly to provide an employee benefit as set forth in this Code section which benefit shall be of de minimis cost to the state and which shall in turn benefit the state through the retention of dedicated and experienced employees.

(c) Any other provision of the law notwithstanding, a facility is authorized to purchase vending machines or enter into vending service agreements by contract, sublease, or license for the purpose of providing vending services to each facility under the jurisdiction of the department. Vending services shall be provided in any facility where the operation of such vending services is capable of generating a profit for that facility. The facility's profits generated from the vending services shall be maintained by the local facility under the authority of the executive director of the facility in an interest-bearing account and the account shall be designated the "employee benefit fund."

(d) The fund shall be administered by a committee of five representatives of the facility to be selected by the executive director of the facility. Funds from the account may be spent as determined by a majority vote of the committee. Funds may be expended on an individual employee of the facility for the purpose of recognizing a death, birth, marriage, or prolonged illness or to provide assistance in the event of a natural disaster or devastation adversely affecting an employee or an

employee's immediate family member. Funds may also be expended on an item or activity which shall benefit all employees of the facility equally for the purposes of developing camaraderie or otherwise fostering loyalty to the department or bringing together the employees of the facility for a meeting, training session, or similar gathering. Funds spent for an individual employee shall not exceed $250.00 per person per event and funds expended for employee gatherings or items shall not exceed $1,000.00 per event or single item; provided, however, that events conducted for the benefit of employees of an entire institution shall not exceed $4,500.00 per event.

(e) The employee benefit fund account of each facility shall be reviewed and audited by the administrative office of the local facility and by the department in accordance with standards and procedures established by the department. No account shall maintain funds in excess of $5,000.00. Any funds collected which cause the fund balance to exceed $5,000.00 shall be remitted to the department's general operating budget.

(f) Nothing in this Code section shall prohibit a facility from purchasing vending machines or providing or maintaining vending services which do not generate a profit, provided that such services are of no cost to the department, nor shall this Code section be construed so as to prohibit a private provider of vending services from making or retaining a profit pursuant to any agreement for such services. (Code 1981, § 42-2-15, enacted by Ga. L. 2006, p. 332, § 1/HB 1318; Ga. L. 2015, p. 422, § 5-69/HB 310.)

The 2015 amendment, effective July 1, 2015, deleted "chief probation official," following "superintendent," in paragraph (a)(3); and deleted "probation office," following "diversion center," in paragraph (a)(4). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

CHAPTER 3

COMMUNITY SUPERVISION AND TRANSITION

Article 1

Board of Community Supervision; Department of Community Supervision

Sec.

Effective date. — This chapter became effective July 1, 2015.

Editor's notes. — The former chapter consisted of Code Sections 42-3-1 through 42-3-32, and was based on Ga. L. 1960, p. 892, §§ 2-30, 32; Ga. L. 1964, p. 91, §§ 1-3; Ga. L. 1965, p. 591, § 1; Ga. L. 1967, p. 810, § 1; Ga. L. 1967, p. 864, §§ 1-4; Ga. L. 1970, p. 552, § 1; Ga. L. 1972, p. 1015, § 419; Ga. L. 1982, p. 3, § 42; Ga. L. 1983, p. 3, § 60; Ga. L. 1985, p. 149, § 42; Ga. L. 1985, p. 283, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1989, p. 415, § 1; Ga. L. 1991, p. 94, § 42.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

ARTICLE 1

BOARD OF COMMUNITY SUPERVISION; DEPARTMENT OF COMMUNITY SUPERVISION

42-3-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the Board of Community Supervision.

(2) "Commissioner" means the commissioner of community supervision.

(3) "Community supervision officer" means an individual employed by DCS who supervises probationers or parolees.

(4) "DCS" means the Department of Community Supervision.

(5) "Split sentence" means any felony sentence that includes a term of imprisonment followed by a term of probation. (Code 1981, § 42-3-1, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-2. Board of Community Supervision created; membership; adoption of rules and regulations; duties.

(a) There is created the Board of Community Supervision which shall establish the general policy to be followed by the Department of Community Supervision and the Governor's Office of Transition, Support, and Reentry. The powers, functions, and duties of the Board of Corrections as they exist on June 30, 2015, with regard to the probation division of the Department of Corrections and supervision of probationers unless otherwise provided in this chapter are transferred to the Board of Community Supervision effective July 1, 2015. The powers, functions, and duties of the State Board of Pardons and Paroles as they exist on June 30, 2015, with regard to the supervision of parolees, unless otherwise provided in this chapter are transferred to the Board of Community Supervision effective July 1, 2015. The powers, functions, and duties of the Board of Juvenile Justice and the Department

of Juvenile Justice as they exist on June 30, 2016, with regard to the probation supervision of children who have been released from restrictive custody and who were adjudicated for a Class A designated felony act or Class B designated felony act, as such terms are defined in Code Section 15-11-2, are transferred to the Board of Community Supervision effective July 1, 2016. The powers, functions, and duties of the County and Municipal Probation Advisory Council as they exist on June 30, 2015, are transferred to the Board of Community Supervision effective July 1, 2015.

(b) The board shall consist of nine members. The commissioner of corrections, commissioner of juvenile justice, chairperson and vice chairperson of the State Board of Pardons and Paroles, director of the Division of Family and Children Services of the Department of Human Services, and commissioner of behavioral health and developmental disabilities shall be members of the board and shall serve on the board so long as they remain in their appointed positions. The Governor shall appoint:

(1) A sheriff who shall serve an initial term ending June 30, 2019, each subsequent term being four years;

(2) A mayor or city manager who shall serve an initial term ending June 30, 2018, each subsequent term being four years; and

(3) A county commissioner or county manager who shall serve an initial term ending June 30, 2017, each subsequent term being four years.

(c) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant. An appointment to fill a vacancy, other than by expiration of a term of office, shall be for the balance of the unexpired term.

(d) Members of the board may be removed from office under the same conditions for removal from office of members of professional licensing boards provided in Code Section 43-1-17.

(e) There shall be a chairperson of the board, elected by and from the membership of the board, who shall be the presiding officer of the board.

(f) The members of the board shall receive per diem and expenses as shall be set and approved by the Office of Planning and Budget and in conformance with rates and allowances set for members of other state boards.

(g)(1) As used in this subsection, the term:

(A) 'Evidence based practices' means supervision policies, procedures, programs, and practices that scientific research demon-

strates reduce recidivism among individuals who are under some form of correctional supervision.

(B) 'Recidivism' means returning to prison or jail within three years of being placed on probation or being discharged or released from a Department of Corrections or jail facility.

(2) The board shall adopt rules and regulations governing the management and treatment of probationers and parolees to ensure that evidence based practices, including the use of a risk and needs assessment and any other method the board deems appropriate, guide decisions related to managing probationers and parolees in the community. The board shall require DCS to collect and analyze data and performance outcomes relevant to the level and type of treatment given to a probationer or parolee and the outcome of the treatment on his or her recidivism and prepare an annual report regarding such information which shall be submitted to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House Committee on State Properties and the Senate State Institutions and Property Committee.

(h) The board shall adopt rules and regulations and such rules and regulations shall be adopted, established, promulgated, amended, repealed, filed, and published in accordance with the applicable provisions and procedure as set forth in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The courts shall take judicial notice of any such rules or regulations.

(i) As used in this Code section, the term "rules and regulations" shall have the same meaning as the word "rule" as defined in paragraph (6) of Code Section 50-13-2.

(j) The board shall perform duties required of it by law and shall, in addition thereto, be responsible for promulgation of all rules and regulations not in conflict with this chapter that may be necessary and appropriate to the administration of DCS and the Governor's Office of Transition, Support, and Reentry, to the accomplishment of the purposes of this chapter and Chapters 8 and 9 of this title, and to the performance of the duties and functions of DCS and the Governor's Office of Transition, Support, and Reentry as set forth in this chapter and Chapters 8 and 9 of this title. (Code 1981, § 42-3-2, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-3. Department of Community Supervision created; responsibilities.

(a) There is created the Department of Community Supervision. DCS shall be the agency primarily responsible for:

(1) Supervision of all defendants who receive a felony sentence of straight probation;

(2) Supervision of all defendants who receive a split sentence;

(3) Supervision of all defendants placed on parole or other conditional release from imprisonment by the State Board of Pardons and Paroles;

(4) Supervision of juvenile offenders when such offender had been placed in restrictive custody due to an adjudication for a Class A designated felony act or Class B designated felony act, as such terms are defined in Code Section 15-11-2, and is released from such custody;

(5) Administration of laws, rules, and regulations relating to probation and parole supervision, as provided for by law;

(6) Enforcement of laws, rules, and regulations relating to probation and parole supervision, as provided for by law; and

(7) Administration of laws as provided in this chapter.

(b) DCS shall ensure that community supervision officers who supervise juvenile offenders receive the same training to work specifically with children and adolescents as is provided for Department of Juvenile Justice probation officers. DCS shall offer the same array of services to juvenile offenders as are available to offenders who are committed to the Department of Juvenile Justice who are not placed in restrictive custody. With respect to the supervision of children, DCS shall be mindful of the purpose of Chapter 11 of Title 15 as set forth in Code Section 15-11-1. (Code 1981, § 42-3-3, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-4. Commissioner of community supervision; duties.

(a) There shall be a commissioner of community supervision who shall be both appointed by and serve at the pleasure of the Governor. Subject to the policies, rules, and regulations established by the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions of DCS.

(b) The commissioner shall receive an annual salary to be set by the Governor which shall be his or her total compensation for services as commissioner. The commissioner shall be reimbursed for all actual and necessary expenses incurred by him or her in carrying out his or her official duties.

(c) The position of commissioner shall be a separate and distinct position from any other position in state government. The duties of the

commissioner shall be performed by the commissioner and not by any other officer of state government, and the commissioner shall not perform the duties of any other officer of state government. (Code 1981, § 42-3-4, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-5. Administrative functions of department.

(a) The commissioner, with the approval of the board, may establish units within DCS as he or she deems proper for its administration and shall designate persons to be assistant commissioners of each unit and to exercise authority as he or she may delegate to them in writing. The commissioner shall establish a victim services unit within DCS to coordinate:

(1) Payment of court ordered restitution; and

(2) Victim services, including, but not limited to, payments available to victims as provided by law and assisting victims with support services.

(b) The commissioner shall have the authority to employ as many individuals as he or she deems necessary for the administration of DCS and for the discharge of the duties of his or her office. The commissioner shall issue all necessary directions, instructions, orders, and rules applicable to employees of DCS. The commissioner shall have authority, as the commissioner deems proper, to employ, assign, compensate, and discharge employees of DCS within the limitations of DCS's appropriation and the restrictions set forth by law.

(c) No employee of DCS shall be compensated for services to DCS on a commission or contingent fee basis.

(d) Neither the commissioner nor any community supervision officer or employee of DCS shall be given or receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law for any service or pretended service either rendered or to be rendered as commissioner or as a community supervision officer or employee of DCS. (Code 1981, § 42-3-5, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-6. Rules and regulations.

(a) The commissioner, with the approval of the board, shall have the power to make and publish reasonable rules and regulations not inconsistent with this title or other laws or with the Constitution of this state or of the United States for the administration of this chapter or any law which it is his or her duty to administer.

(b) The commissioner may prescribe forms as he or she deems necessary for the administration and enforcement of this chapter and

Chapters 8 and 9 of this title or any law which it is his or her duty to administer.

(c) The commissioner may confer all powers of a police officer of this state, including, but not limited to, the power to make summary arrests for violations of any of the criminal laws of this state and the power to carry weapons, upon persons in the commissioner's employment as the commissioner deems necessary, provided that individuals so designated meet the requirements specified in all applicable laws.

(d) The commissioner or his or her designee may authorize certain persons in the commissioner's employment to assist law enforcement officers or correctional officers of local governments in preserving order and peace when so requested by such local authorities.

(e) The following rules and regulations shall remain in full force and effect as rules and regulations of DCS until amended, repealed, or superseded by rules or regulations adopted by the board:

(1) All rules and regulations previously adopted by the Advisory Council for Probation which relate to functions transferred under this chapter from the state-wide probation system to DCS;

(2) All rules and regulations previously adopted by the Department of Corrections or the Board of Corrections which relate to functions transferred under this chapter from the Department of Corrections to DCS;

(3) All rules and regulations previously adopted by the State Board of Pardons and Paroles which relate to functions transferred under this chapter from the State Board of Pardons and Paroles to DCS;

(4) All rules and regulations previously adopted by the Department of Juvenile Justice or the Board of Juvenile Justice which relate to functions transferred under this chapter from the Department of Juvenile Justice to DCS; and

(5) All rules and regulations previously adopted by the County and Municipal Probation Advisory Council which relate to functions transferred under this chapter from the County and Municipal Probation Advisory Council to DCS. (Code 1981, § 42-3-6, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-7. Transfer of prior appropriations, personnel, equipment, and facilities; probation and parole not affected by creation of department.

(a) Appropriations to the Department of Corrections, the Department of Juvenile Justice, the County and Municipal Probation Advisory

Council, and the State Board of Pardons and Paroles for functions transferred to DCS pursuant to this chapter shall be transferred to DCS as provided for in Code Section 45-12-90. Personnel, equipment, and facilities previously employed by the Department of Corrections, the Department of Juvenile Justice, the County and Municipal Probation Advisory Council, and the State Board of Pardons and Paroles for functions transferred to DCS pursuant to this chapter shall likewise be transferred to DCS. Any disagreement as to any of such transfers shall be resolved by the Governor. Any individual who is employed by the Department of Corrections as a probation officer or probation supervisor or by the Board of Pardons and Paroles as a parole officer on or before July 1, 2016, and who is required by the terms of his or her employment to comply with the requirements of Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act," may remain in the employment of the employing agency but shall be transferred for administrative purposes only to DCS on July 1, 2015.

(b) The enactment of this chapter and the Act by which it is enacted shall not affect or abate the status of probation, parole, a probation revocation, or a parole revocation which occurred prior to July 1, 2015. (Code 1981, § 42-3-7, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-8. Employee benefit fund.

(a) As used in this Code section, the term:

(1) "Employee" means a full-time or part-time employee of DCS or an employee serving under contract with DCS.

(2) "Employee benefit fund" means an account containing the facility's profits generated from vending services maintained by a local facility.

(3) "Executive director of the facility" means the chief community supervision officer or such other head of a facility.

(4) "Facility" means a community supervision office or such other similar property under the jurisdiction or operation of DCS.

(5) "Vending services" means one or more vending machines in a location easily accessible by employees, which services may also be accessible by members of the general public, but which vending machines do not require a manager or attendant for the purpose of purchasing food or drink items. Vending services shall be for the provision of snack or food items or nonalcoholic beverages and shall not include any tobacco products or alcoholic beverages.

(b) It is the intent of the General Assembly to provide an employee benefit as set forth in this Code section, which benefit shall be of de

minimis cost to the state and which shall in turn benefit the state through the retention of dedicated and experienced employees.

(c) Any other provision of the law notwithstanding, a facility is authorized to purchase vending machines or enter into vending service agreements by contract, sublease, or license for the purpose of providing vending services to each facility under the jurisdiction of the Department of Corrections. Vending services shall be provided in any facility where the operation of such vending services is capable of generating a profit for that facility. The facility's profits generated from the vending services shall be maintained by the local facility under the authority of the executive director of the facility in an interest-bearing account, and the account shall be designated the employee benefit fund.

(d) The employee benefit fund shall be administered by a committee of five representatives of the facility to be selected by the chief community supervision officer for such facility. Funds from the account may be spent as determined by a majority vote of the committee. Funds may be expended on an individual employee of the facility for the purpose of recognizing a death, birth, marriage, or prolonged illness or to provide assistance in the event of a natural disaster or devastation adversely affecting an employee or an employee's immediate family member. Funds may also be expended on an item or activity which shall benefit all employees of the facility equally for the purposes of developing camaraderie or otherwise fostering loyalty to DCS or bringing together the employees of the facility for a meeting, training session, or similar gathering. Funds spent for an individual employee shall not exceed $250.00 per person per event, and funds expended for employee gatherings or items shall not exceed $1,000.00 per event or single item; provided, however, that events conducted for the benefit of employees of an entire institution shall not exceed $4,500.00 per event.

(e) The employee benefit fund account of each facility shall be reviewed and audited by the administrative office of the local facility and by DCS in accordance with standards and procedures established by DCS. No account shall maintain funds in excess of $5,000.00. Any funds collected which cause the fund balance to exceed $5,000.00 shall be remitted to DCS's general operating budget.

(f) Nothing in this Code section shall prohibit a facility from purchasing vending machines or providing or maintaining vending services which do not generate a profit, provided that such services are of no cost to DCS, nor shall this Code section be construed so as to prohibit a private provider of vending services from making or retaining a profit pursuant to any agreement for such services. (Code 1981, § 42-3-8, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-9. Retention of issued weapon and badge; survivor's rights to badge.

(a) An employee leaving the service of DCS under honorable conditions who has accumulated 20 or more years of service with DCS as a community supervision officer, or 20 or more years of combined service as a parole officer with the State Board of Pardons and Paroles, a probation officer or supervisor with the Department of Corrections, and community supervision officer, shall be entitled as part of such employee's compensation to retain his or her DCS issued weapon and badge.

(b) As used in this subsection, the term "disability" means a disability that prevents an individual from working as a community supervision officer. When a community supervision officer leaves DCS as a result of a disability arising in the line of duty, such officer shall be entitled as part of such officer's compensation to retain his or her weapon and badge in accordance with regulations promulgated by the commissioner.

(c) A community supervision officer who is killed in the line of duty shall be entitled to have his or her DCS issued badge given to a surviving family member.

(d) The board is authorized to promulgate rules and regulations for the implementation of this Code section. (Code 1981, § 42-3-9, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

ARTICLE 2

SUCCESSFUL TRANSITION AND REENTRY OF OFFENDER

42-3-30. Public policy of successful reentry of offender.

The General Assembly finds that there is a need for a coordinated strategy for transition, support, and reentry of offenders in this state. The General Assembly, therefore, declares it to be the public policy of this state to provide the necessary leadership to coordinate successful offender reentry in this state, reduce recidivism, enhance public safety through collaboration among stakeholders, and assist in ensuring the appropriate and responsible use of cost savings realized by justice reforms through reinvestment in evidence based, community centered services. (Code 1981, § 42-3-30, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-31. Governor's Office of Transition, Support, and Reentry created.

There is created the Governor's Office of Transition, Support, and Reentry, which is assigned to DCS for administrative purposes only, as

prescribed in Code Section 50-4-3. (Code 1981, § 42-3-31, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-32. Board authorized to accomplish legislative intent of office.

The board is authorized to do all things and take any action necessary to accomplish the legislative intent of the creation of the Governor's Office of Transition, Support, and Reentry, including, but not limited to, the promulgation of rules and regulations relative thereto. The board is authorized to solicit and accept gifts, grants, donations, property, both real and personal, and services for the purpose of carrying out this article. (Code 1981, § 42-3-32, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-33. Transition of powers, function, and appropriations to new office.

(a) The powers, functions, and duties of the Board of Corrections as they exist on June 30, 2015, with regard to reentry services for the Department of Corrections are transferred to the Governor's Office of Transition, Support, and Reentry effective July 1, 2015. The powers, functions, and duties of the State Board of Pardons and Paroles as they exist on June 30, 2015, with regard to reentry services are transferred to the Governor's Office of Transition, Support, and Reentry effective July 1, 2015. The powers, functions, and duties of the Board of Juvenile Justice and the Department of Juvenile Justice as they exist on June 30, 2016, with regard to reentry services for children who have been placed in restrictive custody and who were adjudicated for a Class A designated felony act or Class B designated felony act, as such terms are defined in Code Section 15-11-2, are transferred to the Governor's Office of Transition, Support, and Reentry effective July 1, 2016.

(b) Appropriations to the Department of Corrections, the State Board of Pardons and Paroles, and the Department of Juvenile Justice for functions transferred to DCS pursuant to this article shall be transferred to the Governor's Office of Transition, Support, and Reentry as provided for in Code Section 45-12-90. Personnel, equipment, and facilities previously employed by the Department of Corrections, the State Board of Pardons and Paroles, and the Department of Juvenile Justice for functions transferred to the Governor's Office of Transition, Support, and Reentry pursuant to this article shall likewise be transferred to Governor's Office of Transition, Support, and Reentry. Any disagreement as to any of such transfers shall be resolved by the Governor. (Code 1981, § 42-3-33, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-34. Appointment of director; duties.

There shall be a director of the Governor's Office of Transition, Support, and Reentry who shall be both appointed by and serve at the pleasure of the Governor. Subject to the policies, rules, and regulations established by the board for such office, the director shall supervise, direct, account for, organize, plan, administer, and execute the functions of such office. The director shall receive an annual salary to be set by the Governor which shall be his or her total compensation for services as director. The director shall be reimbursed for all actual and necessary expenses incurred by him or her in carrying out his or her official duties. The position of director shall be a separate and distinct position from any other position in state government. The duties of the director shall be performed by the director and not by any other officer of state government, and the director shall not perform the duties of any other officer of state government. (Code 1981, § 42-3-34, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-35. Establishment of units within office; administration.

(a) The director may establish units within the Governor's Office of Transition, Support, and Reentry as he or she deems proper for its administration and shall designate persons to be assistant directors of each unit and to exercise authority as he or she may delegate to them in writing as approved by the board.

(b) No person shall be compensated for services to the Governor's Office of Transition, Support, and Reentry on a commission or contingent fee basis.

(c) Neither the director nor any employee of the Governor's Office of Transition, Support, and Reentry shall be given or receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law for any service or pretended service either rendered or to be rendered as director or employee of the Governor's Office of Transition, Support, and Reentry. (Code 1981, § 42-3-35, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

ARTICLE 3

COMMUNITY SERVICE

Editor's notes. — This Article is the same as or substantially similar to former Article 4 of Chapter 8 of Title 42—see the bound volume for annotations and other notes.

42-3-50. Definitions; assignment of community service for personal gain prohibited.

(a) As used in this article, the term:

(1) "Agency" means any private or public agency or organization approved by the court to participate in a community service program.

(2) "Community service" means uncompensated work by an offender with an agency for the benefit of the community pursuant to an order by a court as a condition of probation. Such term includes uncompensated service by an offender who lives in the household of a disabled person and provides aid and services to such disabled person, including, but not limited to, cooking, housecleaning, shopping, driving, bathing, and dressing.

(3) "Community service officer" means an individual appointed by the court to place and supervise offenders sentenced to community service. Such term may mean a paid professional or a volunteer.

(b) Except as provided in subsection (c) of this Code section, it shall be unlawful for an agency or community service officer to use or allow an offender to be used for any purpose resulting in private gain to any individual.

(c) Subsection (b) of this Code section shall not apply to:

(1) Services provided by an offender to a disabled person in accordance with paragraph (1) of subsection (c) of Code Section 42-3-52;

(2) Work on private property because of a natural disaster; or

(3) An order or direction by the sentencing court.

(d) Any person who violates subsection (b) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 42-3-50, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

Editor's notes. — This Code section is the same as or substantially similar to former Code Section 42-8-70—see the bound volume for annotations and other notes.

42-3-51. Community service program; letter of application; requirements; limitation of liability.

(a) Agencies desiring to participate in a community service program shall file with the court a letter of application showing:

(1) Eligibility;

(2) Number of offenders who may be placed with the agency;

(3) Work to be performed by the offender; and

(4) Provisions for supervising the offender.

(b) An agency selected for the community service program shall work offenders who are assigned to the agency by the court. If an offender violates a court order, the agency shall report such violation to the community service officer.

(c) If an agency violates any court order or provision of this article, the offender shall be removed from the agency and the agency shall no longer be eligible to participate in the community service program.

(d) No agency or community service officer shall be liable at law as a result of any of such agency's or community service officer's acts performed while participating in a community service program. This limitation of liability shall not apply to actions on the part of any agency or community service officer which constitute gross negligence, recklessness, or willful misconduct. (Code 1981, § 42-3-51, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

Editor's notes. — This Code section is the same or substantially similar to former Code Section 42-8-71—see the bound volume for annotations and other notes.

42-3-52. Community service as condition of probation.

(a) Community service may be considered as a condition of probation with primary consideration given to the following categories of offenders:

(1) Traffic violations;

(2) Ordinance violations;

(3) Noninjurious or nondestructive, nonviolent misdemeanors;

(4) Noninjurious or nondestructive, nonviolent felonies; and

(5) Other offenders considered upon the discretion of the court.

(b) The court may confer with the prosecuting attorney, the offender or his or her attorney if the offender is represented by an attorney, a community supervision officer, a community service officer, or other interested persons to determine if the community service program is appropriate for an offender. If community service is ordered as a condition of probation, the court shall order:

(1) Not less than 20 hours nor more than 250 hours in cases involving traffic or ordinance violations or misdemeanors, such service to be completed within one year; or

(2) Not less than 20 hours nor more than 500 hours in felony cases, such service to be completed within three years.

(c)(1) Any agency may recommend to the court that certain disabled persons are in need of a live-in attendant. The court shall confer with the prosecuting attorney, the offender or his or her attorney if the offender is represented by an attorney, a community supervision officer, a community service officer, or other interested persons to determine if a community service program involving a disabled person is appropriate for an offender. If community service as a live-in attendant for a disabled person is deemed appropriate and if both the offender and the disabled person consent to such service, the court may order such live-in community service as a condition of probation but for no longer than two years.

(2) The agency shall be responsible for coordinating the provisions of the cost of food or other necessities for the offender which the disabled person is not able to provide. The agency, with the approval of the court, shall determine a schedule which will provide the offender with certain free hours each week.

(3) Such live-in arrangement shall be terminated by the court upon the request of the offender or the disabled person. Upon termination of such arrangement, the court shall determine if the offender has met the conditions of probation.

(4) The appropriate agency shall make personal contact with the disabled person on a frequent basis to ensure the safety and welfare of the disabled person.

(d) The court may order an offender to perform community service hours in a 40 hour per week work detail in lieu of incarceration.

(e) Community service hours may be added to original court ordered hours as a disciplinary action by the court, as an additional requirement of any program in lieu of incarceration, or as part of the sentencing options system as set forth in Article 6 of this chapter. (Code 1981, § 42-3-52, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

Editor's notes. — This Code section is the same as or substantially similar to former Code Section 42-8-72—see the bound volume for annotations and other notes.

42-3-53. Placement with appropriate agency; approval by court; report of offender's performance.

The community service officer shall place an offender sentenced to community service as a condition of probation with an appropriate agency. The agency and work schedule shall be approved by the court. If the offender is employed at the time of sentencing or if the offender becomes employed after sentencing, the community service officer shall consider the offender's work schedule and, to the extent practicable, shall schedule the community service so that it will not conflict with the

offender's work schedule. This shall not be construed as requiring the community service officer to alter scheduled community service based on changes in an offender's work schedule. The community service officer shall supervise the offender for the duration of the community service sentence. Upon completion of the community service sentence, the community service officer shall prepare a written report evaluating the offender's performance which shall be used to determine if the conditions of probation have been satisfied. (Code 1981, § 42-3-53, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

Editor's notes. — This Code section is the same as or substantially similar to former Code Section 42-8-73—see the bound volume for annotations and other notes.

42-3-54. Applicability of Articles 2, 3, and 6 of this chapter; award of good time.

(a) The provisions of Article 2 of Chapter 8 of this title shall be applicable to offenders sentenced to community service as a condition of probation pursuant to this article. The provisions of Article 3 of Chapter 8 of this title shall be applicable to first offenders sentenced pursuant to this article. The provisions of Article 6 of Chapter 8 of this title shall be applicable to misdemeanor or ordinance violator offenders sentenced to community service as a condition of probation pursuant to this article.

(b) Any offender who provides live-in community service but who is later incarcerated for breaking the conditions of probation or for any other cause may be awarded good time for each day of live-in community service the same as if such offender were in prison for such number of days. (Code 1981, § 42-3-54, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

ARTICLE 4

PRETRIAL RELEASE AND DIVERSION PROGRAMS

Editor's notes. — This Article is the same as or substantially similar to former Article 5 of Chapter 8 of Title 42—see the bound volume for annotations and other notes.

42-3-70. Operation of pretrial release and diversion programs.

DCS shall be authorized to establish and operate pretrial release and diversion programs as rehabilitative measures for persons charged with felonies for which bond is permissible under the law in the courts of this state prior to conviction; provided, however, that no such program shall be established in a county without the unanimous approval of the superior court judges, the district attorney, and the sheriff of such county. The board shall promulgate rules and regulations

governing any pretrial release and diversion programs established and operated by DCS and shall grant authorization for the establishment of such programs based on the availability of sufficient staff and resources. (Code 1981, § 42-3-70, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

Editor's notes. — This Code section is the same as or substantially similar to former Code Section 42-8-80—see the bound volume for annotations and other notes.

42-3-71. Discretionary release upon application by person charged with felony.

The court in which a person is charged with a felony for which bond is permissible under the law may, upon the application by the person so charged, at its discretion release the person prior to conviction and upon recognizance to the supervision of a pretrial release or diversion program established and operated by DCS after an investigation and upon recommendation of the staff of the pretrial release or diversion program. In no case, however, shall any person be so released unless after consultation with his or her attorney or an attorney made available to the person if he or she is indigent that person has voluntarily agreed to participate in the pretrial release or diversion program and knowingly and intelligently has waived his or her right to a speedy trial for the period of pretrial release or diversion. (Code 1981, § 42-3-71, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-72. Contracts with counties for services and facilities.

DCS may contract with the various counties of this state for the services and facilities necessary to operate pretrial release and diversion programs established under this article, and both DCS and the counties are authorized to enter into such contracts as are appropriate to carry out the purpose of this article. (Code 1981, § 42-3-72, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-73. Authority to establish and operate pretrial release diversion programs does not affect contracting authority of Georgia Department of Labor.

The authority to establish and operate pretrial release and diversion programs granted to DCS under this article shall not affect the authority of the Georgia Department of Labor to enter into agreements with district attorneys of the several judicial circuits of this state for the purpose of establishing and operating pretrial intervention programs in such judicial circuits. (Code 1981, § 42-3-73, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-74. Judicial approval for pretrial release and diversion program required.

No person shall be released on his or her own recognizance or approved for a pretrial release and diversion program without first having the approval in writing of the judge of the court having jurisdiction of the case. (Code 1981, § 42-3-74, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

ARTICLE 5

DIVERSION CENTER AND PROGRAM FOR VIOLATION OF ALIMONY AND CHILD SUPPORT ORDERS

Editor's notes. — This Article is the same as or substantially similar to former Article 8 of Chapter 8 of Title 42—see the bound volume for annotations and other notes.

42-3-90. Establishment of diversion center; authorization for travel to and from employment; requirements during confinement at diversion center.

A county shall be authorized to establish a diversion center under the direction of the sheriff of the county in which the diversion center is located and a diversion program for the confinement of certain persons who have been found in contempt of court for violation of orders granting temporary or permanent alimony or child support and sentenced pursuant to subsection (c) of Code Section 15-1-4. While in such diversion program, the respondent shall be authorized to travel to and from his or her place of employment and to continue his or her occupation. The official in charge of the diversion program or his or her designee shall prescribe the routes, manner of travel, and periods of travel to be used by the respondent in attending to his or her occupation. If the respondent's occupation requires the respondent to travel away from his or her place of employment, the amount and conditions of such travel shall be approved by the official in charge of the diversion center or his or her designee. When the respondent is not traveling to or from his or her place of employment or engaging in his or her occupation, such person shall be confined in the diversion center during the term of the sentence. With the approval of the sheriff or his or her designee, the respondent may participate in educational or counseling programs offered at the diversion center. While participating in the diversion program, the respondent shall be liable for alimony or child support as previously ordered, including arrears, and his or her income shall be subject to the provisions of Code Sections 19-6-30 through 19-6-33 and Chapter 11 of Title 19. In addition, should any funds remain after payment of child support or alimony, the respondent

may be charged a fee payable to the county operating the diversion program to cover the costs of his or her incarceration and the administration of the diversion program which fee shall be not more than $30.00 per day or the actual per diem cost of maintaining the respondent, whichever is less, for the entire period of time the person is confined to the center and participating in the program. If the respondent fails to comply with any of the requirements imposed upon him or her in accordance with this Code section, nothing shall prevent the sentencing judge from revoking such assignment to a diversion program and providing for alternative methods of incarceration. (Code 1981, § 42-3-90, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, "and" was deleted following "the respondent may be charged" in the middle of this Code section.

Editor's notes. — This Code section is the same as or substantially similar to former Code Section 42-8-130—see the bound volume for annotations and other notes.

ARTICLE 6

PROBATION MANAGEMENT

Editor's notes. — This Article is the same as or substantially similar to former Article 9 of Chapter 8 of Title 42—see the bound volume for annotations and other notes.

42-3-110. Short title.

This article shall be known and may be cited as the "Probation Management Act." (Code 1981, § 42-3-110, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-111. Definitions.

For purposes of this article, the term:

(1) "Chief community supervision officer" means the highest ranking field community supervision officer in each judicial circuit.

(2) "Electronic monitoring" means supervising, mapping, or tracking the location of a probationer by means including electronic surveillance, voice recognition, facial recognition, fingerprinting or biometric scan, automated kiosk, automobile ignition interlock device, or global positioning systems which may coordinate data with crime scene information.

(3) "Hearing officer" means an impartial DCS employee or representative who has been selected and appointed to hear alleged cases regarding violations of probation for administrative sanctioning.

(4) "Initial sanction" means the sanction set by the judge upon initial sentencing.

(5) "Options system day reporting center" means a state facility providing supervision of probationers which includes, but is not limited to, mandatory reporting, program participation, drug testing, community service, all special conditions of probation, and general conditions of probation as set forth in Code Section 42-8-35.

(6) "Options system probationer" means a probationer who has been sentenced to the sentencing options system.

(7) "Probation supervision" means a level of probation supervision which includes, but is not limited to, general conditions of probation as set forth in Code Section 42-8-35 and all special conditions of probation.

(8) "Residential substance abuse treatment facility" means a state correctional facility that provides inpatient treatment for alcohol and drug abuse.

(9) "Sentencing options system" means a continuum of sanctions for probationers that includes the sanctions set forth in subsection (c) of Code Section 42-3-113. (Code 1981, § 42-3-111, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-112. Sentencing options system.

(a) In addition to any other terms or conditions of probation provided for under this chapter, the sentencing judge may require that defendants who are sentenced to probation pursuant to subsection (c) of Code Section 42-8-34 be ordered to the sentencing options system.

(b) When a defendant has been ordered to the sentencing options system, the court shall retain jurisdiction throughout the period of the probated sentence as provided in subsection (g) of Code Section 42-8-34 and may modify or revoke any part of a probated sentence as provided in Code Section 42-8-34.1 and subsection (c) of Code Section 42-8-38. (Code 1981, § 42-3-112, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-113. System of administrative sanctions.

(a) DCS shall be authorized to establish by rules and regulations a system of administrative sanctions as an alternative to judicial modifications or revocations for probationers who violate the terms and conditions of the sentencing options system established under this article. DCS may not, however, sanction probationers for violations of special conditions of probation or general conditions of probation for

which the sentencing judge has expressed an intention that such violations be heard by the court pursuant to Code Section 42-8-34.1.

(b) DCS shall only impose restrictions which are equal to or less restrictive than the sanction cap set by the sentencing judge.

(c) The administrative sanctions which may be imposed by DCS are as follows, from most restrictive to least restrictive:

(1) Probation detention center or residential substance abuse treatment facility;

(2) Probation boot camp;

(3) DCS day reporting center;

(4) Electronic monitoring;

(5) Community service; or

(6) Probation supervision.

(d) DCS may order offenders sanctioned pursuant to paragraphs (1) through (3) of subsection (c) of this Code section to be held in the local jail until transported to a designated facility. (Code 1981, § 42-3-113, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-114. Preliminary hearing for alleged violation of probation.

(a) Whenever an options system probationer is arrested on a warrant for an alleged violation of probation, an informal preliminary hearing shall be held within a reasonable time not to exceed 15 days.

(b) A preliminary hearing shall not be required when:

(1) The probationer is not under arrest on a warrant;

(2) The probationer signed a waiver of a preliminary hearing; or

(3) The administrative hearing referred to in Code Section 42-3-115 will be held within 15 days of arrest. (Code 1981, § 42-3-114, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-115. Authorization to impose administrative sanctions; petition; hearing; administrative proceeding.

(a) If an options system probationer violates the conditions of probation, DCS may impose administrative sanctions as an alternative to judicial modification or revocation of probation.

(b) Upon issuance of a petition outlining the alleged probation violations, the chief community supervision officer, or his or her

designee, may conduct a hearing to determine whether an options system probationer has violated a condition of probation. If the chief community supervision officer determines that the probationer has violated a condition of probation, the chief community supervision officer shall be authorized to impose sanctions consistent with paragraphs (4) through (7) of subsection (c) of Code Section 42-3-113. The failure of an options system probationer to comply with a sanction imposed by the chief community supervision officer shall constitute a violation of probation.

(c)(1) Upon issuance of a petition outlining the alleged probation violations, the hearing officer may initiate an administrative proceeding to determine whether an options system probationer has violated a condition of probation. If the hearing officer determines by a preponderance of the evidence that the probationer has violated a condition of probation, the hearing officer may impose sanctions consistent with Code Section 42-3-113.

(2) The administrative proceeding provided for under this subsection shall be commenced within 15 days but not less than 48 hours after notice of the administrative proceeding has been served on the probationer. The administrative proceeding may be conducted electronically.

(d) The failure of a probationer to comply with the sanction or sanctions imposed by the chief community supervision officer or hearing officer shall constitute a violation of probation.

(e) An options system probationer may at any time waive a hearing and voluntarily accept the sanctions proposed by DCS. (Code 1981, § 42-3-115, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-116. Finality of hearing officer's decision; request for review; appeal.

(a) The hearing officer's decision shall be final unless the options system probationer files a request for review with the senior hearing officer. A request for review must be filed within 15 days of the issuance of DCS's decision. Such request shall not stay DCS's decision. The senior hearing officer shall issue a response within seven days of receipt of the review request.

(b) The senior hearing officer's decision shall be final unless the options system probationer files an appeal in the sentencing court. Such appeal shall name the commissioner as defendant and shall be filed within 30 days of the issuance of the decision by the senior hearing officer.

(c) This appeal shall first be reviewed by the judge upon the record. At the judge's discretion, a de novo hearing may be held on the decision. The filing of the appeal shall not stay DCS's decision.

(d) Where the sentencing judge does not act on the appeal within 30 days of the date of the filing of the appeal, DCS's decision shall be affirmed by operation of law. (Code 1981, § 42-3-116, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-117. Article not construed as repealing any court's probationary or supervisory power.

Nothing contained in this article shall be construed as repealing any power given to any court of this state to place offenders on probation or to provide conditions of supervision for offenders. (Code 1981, § 42-3-117, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-118. Applicability of article.

This article shall only apply in judicial circuits where DCS has allocated certified hearing officers. (Code 1981, § 42-3-118, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

42-3-119. Liberal construction of article.

This article shall be liberally construed so that its purposes may be achieved. (Code 1981, § 42-3-119, enacted by Ga. L. 2015, p. 422, § 1-1/HB 310.)

CHAPTER 4

JAILS

Article 3
Medical Services for Inmates

Sec.
42-4-50. Definitions.

ARTICLE 3

MEDICAL SERVICES FOR INMATES

42-4-50. Definitions.

As used in this article, the term:

(1) "Detention facility" means a municipal or county jail used for the detention of persons charged with or convicted of either a felony, a misdemeanor, or a municipal offense.

(2) "Governing authority" means the governing authority of the county or municipality in which the detention facility is located.

(3) "Inmate" means a person who is detained in a detention facility by reason of being charged with or convicted of a felony, a misdemeanor, or a municipal offense. Such term does not include any sentenced inmate who is the responsibility of the Department of Corrections.

(4) "Medical care" includes medical attention, dental care, and medicine and necessary and associated costs such as transportation, guards, room, and board.

(5) "Officer in charge" means the sheriff, if the detention facility is under his or her supervision, or the warden, captain, or superintendent having the supervision of any other detention facility. (Code 1981, § 42-4-50, enacted by Ga. L. 1992, p. 2125, § 2; Ga. L. 1995, p. 1059, § 1; Ga. L. 1996, p. 1081, § 1; Ga. L. 1996, p. 1264, § 1; Ga. L. 2015, p. 422, § 5-70/HB 310.)

The 2015 amendment, effective July 1, 2015, deleted "State" preceding "Department of Corrections" in paragraph (3). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

CHAPTER 5

CORRECTIONAL INSTITUTIONS OF STATE AND COUNTIES

Article 3

Conditions of Detention Generally

Sec.

ARTICLE 3

CONDITIONS OF DETENTION GENERALLY

42-5-50. Transmittal of information on convicted persons; place of detention; payment for inmates not transferred to the custody of the department; notice in the event of convicted person free on bond pending appeal.

(a) The clerk of the court shall notify the commissioner of a sentence within 30 working days following the receipt of the sentence and send other documents set forth in this Code section. Such notice shall be submitted electronically and shall contain the following documents:

(1) A certified copy of the sentence;

(2) A complete history of the convicted person, including a certified copy of the indictment, accusation, or both and such other information as the commissioner may require;

(3) An affidavit of the custodian of such person indicating the total number of days the convicted person was incarcerated prior to the imposition of the sentence. It shall be the duty of the custodian of such person to transmit the affidavit provided for in this paragraph to the clerk of the superior court within ten days following the date on which the sentence is imposed;

(4) Order of probation revocation or tolling of probation; and

(5) A copy of the sentencing information report is required in all jurisdictions with an options system day reporting center certified by the Department of Community Supervision. The failure to provide the sentencing information report shall not cause an increase in the 15 day time period for the department to assign the inmate to a correctional institution as set forth in subsection (b) of this Code section.

All of the aforementioned documents shall be submitted on forms provided by the commissioner. The commissioner shall file one copy of each such document with the State Board of Pardons and Paroles within 30 working days of receipt of such documents from the clerk of the court. Except where the clerk is on a salary, the clerk shall receive from funds of the county the fee prescribed in Code Section 15-6-77 for such service.

(b) Within 15 days after the receipt of the information provided for in subsection (a) of this Code section, the commissioner shall assign the convicted person to a correctional institution designated by the commissioner in accordance with subsection (b) of Code Section 42-5-51. It shall be the financial responsibility of the correctional institution to

provide for the picking up and transportation, under guard, of the inmate to the inmate's assigned place of detention. If the inmate is assigned to a county correctional institution or other county facility, the county shall assume such duty and responsibility.

(c) The state shall pay for each such inmate not transferred to the custody of the department from a county facility the per diem rate specified by subsection (c) of Code Section 42-5-51 for each day the inmate remains in the custody of the county after the department receives the notice provided by subsection (a) of this Code section.

(d) In the event that the convicted person is free on bond pending the appeal of his or her conviction, the notice provided for in subsection (a) of this Code section shall not be transmitted to the commissioner until all appeals of such conviction have been disposed of or until the bond shall be revoked. (Ga. L. 1956, p. 161, § 13; Ga. L. 1968, p. 1399, § 1; Ga. L. 1977, p. 1098, § 9; Ga. L. 1982, p. 1364, § 1; Ga. L. 1983, p. 3, § 31; Ga. L. 1985, p. 149, § 42; Ga. L. 1990, p. 565, § 1; Ga. L. 1991, p. 94, § 42; Ga. L. 1998, p. 194, § 1; Ga. L. 2004, p. 775, § 2; Ga. L. 2010, p. 214, § 17/HB 567; Ga. L. 2012, p. 899, § 7-5/HB 1176; Ga. L. 2013, p. 141, § 42/HB 79; Ga. L. 2015, p. 422, § 5-71/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "Department of Community Supervision" for "department" in the first sentence of paragraph (a)(5). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

CHAPTER 8

PROBATION

Article 1

Advisory Council for Probation

Sec.
42-8-1 through 42-8-3 [Repealed].

Article 2

State-wide Probation System

ARTICLE 1

ADVISORY COUNCIL FOR PROBATION

42-8-1 through 42-8-3.

Repealed by Ga. L. 2015, p. 422, § 2-1/HB 310, effective July 1, 2015.

Editor's notes. — This article was based on Ga. L. 1980, p. 400, §§ 1-3; Ga. L. 1985, p. 283, § 1; Ga. L. 2014, p. 866, § 42/SB 340.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

ARTICLE 2

STATE-WIDE PROBATION SYSTEM

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-20. Short title.

Editor's notes. — Ga. L. 2015, p. 422, § 4-1/HB 310, effective July 1, 2015, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

Cited in Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456 (2014).

42-8-21. Definitions.

As used in this article, the term:

(1) "DCS" means the Department of Community Supervision.

(2) "Officer" means a community supervision officer as defined in Code Section 42-3-1. (Code 1981, § 42-8-21, enacted by Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions for "Reserved."

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-22. State-wide probation system for felony offenders created; administration generally.

There is created a state-wide probation system for felony offenders to be administered by DCS. Separate files and records shall be kept with relation to the system. (Ga. L. 1956, p. 27, § 2; Ga. L. 1958, p. 15, § 1; Ga. L. 1962, p. 16, § 1; Ga. L. 1966, p. 56, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 2000, p. 1643, § 2; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of this Code section for the former provisions, which read: "There is created a state-wide probation system for felony offenders to be administered by the Department of Corrections. The probation system shall not be administered as part of the duties and activities of the State Board of Pardons and Paroles. Separate

files and records shall be kept with relation to the system." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

Cited in Sentinel Offender Svcs., LLC v. Glover, No. S14A1271, S14X1272, 2014 Ga. LEXIS 940 (Nov. 24, 2014).

42-8-23. Administration of supervision of felony probationers by DCS; graduated sanctions.

(a) As used in this Code section, the term "chief officer" means the highest ranking field officer in each judicial circuit who does not have direct supervision of the probationer who is the subject of the hearing.

(b) DCS shall administer the supervision of felony probationers.

(c) If graduated sanctions have been made a condition of probation by the court and if a probationer violates the conditions of his or her probation, other than for the commission of a new offense, DCS may impose graduated sanctions as an alternative to judicial modification or revocation of probation, provided that such graduated sanctions are approved by a chief officer.

(d) The failure of a probationer to comply with the graduated sanction or sanctions imposed by DCS shall constitute a violation of probation.

(e) A probationer may at any time voluntarily accept the graduated sanctions proposed by DCS.

(f)(1) DCS's decision shall be final unless the probationer files an appeal in the sentencing court. Such appeal shall be filed within 30 days of the issuance of the decision by DCS.

(2) Such appeal shall first be reviewed by the sentencing court upon the record. At the court's discretion, a de novo hearing may be held on the decision. The filing of the appeal shall not stay DCS's decision.

(3) When the sentencing court does not act on the appeal within 30 days of the date of the filing of the appeal, DCS's decision shall be affirmed by operation of law.

(g) Nothing contained in this Code section shall alter the relationship between judges and officers prescribed in this article nor be construed as repealing any power given to any court of this state to place offenders on probation or to supervise offenders. (Ga. L. 1972, p.

1069, § 14; Ga. L. 1977, p. 1209, § 2; Ga. L. 1978, p. 1647, § 3; Ga. L. 2000, p. 1643, § 2; Ga. L. 2012, p. 899, § 7-7/HB 1176; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "DCS" for "The department" and "the department" throughout this Code section; substituted "DCS's" for "The department's" and "the department's" throughout this Code section; deleted "probation" preceding "officer" in two places in subsection (a) and near the end of subsection (c); in paragraph (f)(2), substituted "sentencing court" for "judge" in the first sentence, substituted "court's discretion" for "judge's discretion" in the second sentence; substituted "court" for "judge" in paragraph (f)(3); and substituted "officers" for "probation supervisors" in subsection (g). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-24. General duties of DCS; rules and regulations.

(a) As used in this Code section, the term "split sentence" means any felony sentence that includes a term of imprisonment followed by a term of probation.

(b) It shall be the duty of DCS to supervise and direct the work of the officers provided for in Code Section 42-8-25 and to keep accurate files and records on all probation cases, split sentence cases, parole cases, persons released pursuant to Code Section 17-10-1, and persons under supervision. It shall be the duty of the Board of Community Supervision to promulgate rules and regulations necessary to effectuate the purposes of this chapter. (Ga. L. 1956, p. 27, § 4; Ga. L. 1958, p. 15, § 4; Ga. L. 1967, p. 86, § 3; Ga. L. 1969, p. 945, § 1; Ga. L. 1972, p. 604, § 3; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, added subsection (a); redesignated the previously existing provisions as subsection (b); and, in subsection (b), in the first sentence, substituted "DCS" for "the department" near the beginning, substituted "officers" for "probation supervisors" near the middle, inserted ", split sentence cases, parole cases, persons released pursuant to Code Section 17-10-1,", and substituted "under supervision" for "on probation" at the end, and substituted "Board of Community Supervision" for "board" in the second sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-25. Employment of community service officers; assignment to circuits by DCS.

DCS shall employ officers. DCS may assign one officer to each judicial circuit in this state or, for purposes of assignment, may consolidate two or more judicial circuits and assign one officer thereto. In the event DCS

determines that more than one officer is needed for a particular circuit, additional officers may be assigned to the circuit. DCS is authorized to direct any officer to assist any other officer wherever assigned. In the event more than one officer is assigned to the same office or to the same division within a particular judicial circuit, DCS shall designate one of the officers to be in charge. (Ga. L. 1956, p. 27, § 5; Ga. L. 1958, p. 15, § 5; Ga. L. 1965, p. 413, § 1; Ga. L. 1972, p. 604, § 4; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of this Code section for the former provisions, which read: "The department shall employ probation supervisors. The department may assign one supervisor to each judicial circuit in this state or, for purposes of assignment, may consolidate two or more judicial circuits and assign one supervisor thereto. In the event the department determines that more than one supervisor is needed for a particular circuit, an additional supervisor or additional supervisors may be assigned to the circuit. The department is authorized to direct any probation supervisor to assist any other probation supervisor wherever assigned. In the event that more than one supervisor is assigned to the same office or to the same division within a particular judicial circuit, the department shall designate one of the supervisors to be in charge." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-26. Qualifications of officer; compensation and expenses; conflicts of interest; bonds.

(a)(1) In order for a person to be an officer, he or she shall be at least 21 years of age at the time of appointment and shall have completed a standard two-year college course. The qualifications provided in this Code section are the minimum qualifications, and DCS is authorized to prescribe such additional and higher educational qualifications from time to time as it deems desirable, but not to exceed a four-year standard college course.

(2) After January 1, 2016, in order for a person to be an officer, he or she shall complete the basic course of training for supervision of probations and parolees certified by the Peace Officer Standards and Training Council; provided, however, that such requirement shall be waived if such person is a certified peace officer.

(b) The compensation of officers shall be set pursuant to the rules of the State Personnel Board. Officers shall also be allowed travel and other expenses as are other state employees.

(c)(1) No officer shall engage in any other employment, business, or activities which interfere or conflict with his or her duties and responsibilities as an officer.

(2) No officer shall own, operate, have any financial interest in, be an instructor at, or be employed by any private entity which provides

drug or alcohol education services or offers a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services.

(3) No officer shall specify, directly or indirectly, a particular DUI Alcohol or Drug Use Risk Reduction Program which a probationer may or shall attend. This paragraph shall not prohibit such officer from furnishing any probationer, upon request, the names of certified DUI Alcohol or Drug Use Risk Reduction Programs. Any officer violating this paragraph shall be guilty of a misdemeanor.

(d) Each officer shall give bond in such amount as may be fixed by DCS for the use of the person or persons damaged by his or her misfeasance or malfeasance and conditioned on the faithful performance of his or her duties. The cost of the bond shall be paid by DCS; provided, however, that the bond may be procured, either by DCS or by the Department of Administrative Services, under a master policy or on a group blanket coverage basis, where only the number of positions in each judicial circuit and the amount of coverage for each position are listed in a schedule attached to the bond; and in such case each individual shall be fully bonded and bound as principal, together with the surety, by virtue of his or her holding the position or performing the duties of officer in the circuit or circuits, and his or her individual signature shall not be necessary for such bond to be valid in accordance with all the laws of this state. The bond or bonds shall be made payable to DCS. (Ga. L. 1956, p. 27, § 6; Ga. L. 1958, p. 15, § 6; Ga. L. 1960, p. 1092, § 1; Ga. L. 1965, p. 413, § 2; Ga. L. 1967, p. 86, § 4; Ga. L. 1972, p. 604, § 5; Ga. L. 1991, p. 94, § 42; Ga. L. 1992, p. 3221, § 4; Ga. L. 1996, p. 1107, § 1; Ga. L. 2005, p. 334, § 24-1/HB 501; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-63/HB 642; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, designated the previously existing provisions of subsection (a) as paragraph (a)(1); and, in paragraph (a)(1), substituted the present provisions for the former provisions, which read: "In order for a person to hold the office of probation supervisor, he or she must be at least 21 years of age at the time of appointment and must have completed a standard two-year college course, provided that any person who is employed as a probation supervisor on or before July 1, 1972, shall not be required to meet the educational requirements specified in this Code section, nor shall he or she be prejudiced in any way for not possessing the requirements. The qualifications provided in this Code section are the minimum qualifications and the department is authorized to prescribe such additional and higher educational qualifications from time to time as it deems desirable, but not to exceed a four-year standard college course."; added paragraph (a)(2); in subsection (b), substituted "officers" for "the probation supervisors" in the first sentence, and substituted "Officers" for "Probation supervisors" at the beginning of the second sentence; substituted "officer" for "supervisor" throughout subsection (c); substituted "an officer" for "probation supervisor" at the end of paragraph (c)(1); substituted "such officer" for "any supervisor" near the middle of second sentence of paragraph (c)(3); in subsection (d), substituted "DCS" for "the

department" throughout, in the first sentence, substituted "officer" for "probation supervisor" near the beginning and near the end of the proviso, and substituted "DCS" for "the department payable to the department" in the middle of the first sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-27. Duties of officers.

An officer shall supervise and counsel probationers and parolees in the judicial circuit to which he or she is assigned. Each officer shall perform the duties prescribed in this chapter and other duties as are prescribed by DCS and shall make and keep any records and files and make such reports as are required of him or her by DCS, the State Board of Pardons and Paroles, or a court. (Ga. L. 1956, p. 27, § 7; Ga. L. 1958, p. 15, § 7; Ga. L. 1972, p. 604, § 6; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of this Code section for the former provisions, which read: "The probation supervisor shall supervise and counsel probationers in the judicial circuit to which he is assigned. Each supervisor shall perform the duties prescribed in this chapter and such duties as are prescribed by the department and shall keep such records and files and make such reports as are required of him." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-28. Assignment of officers among judicial circuits generally.

Officers shall be assigned among the respective judicial circuits based generally on the relative number of persons on probation and parole in each circuit. (Ga. L. 1972, p. 604, § 15A; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, in this Code section, substituted "Officers" for "Probation supervisors" at the beginning, and inserted "and parole". See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-29. Presentence investigations; supervision of probationers; maintenance of records relating to probationers.

(a) It shall be the duty of each officer to investigate all cases referred to him or her by the court and to make findings and report thereon in

writing to the court with a recommendation. The superior court may require, before imposition of sentence, a presentence investigation and written report in each felony case in which the defendant has entered a plea of guilty or nolo contendere or has been convicted.

(b) An officer shall cause to be delivered to each person placed on probation under his or her supervision a copy of the terms of probation and any change or modification thereof and shall cause the person to be instructed regarding the same. An officer shall keep informed concerning the conduct, habits, associates, employment, recreation, and whereabouts of the probationer or parolee by visits, by requiring reports, or in other ways. An officer shall use all practicable and proper methods to aid and encourage persons on probation or parole and to bring about improvements in their conduct and condition. (Ga. L. 1956, p. 27, § 9; Ga. L. 1972, p. 604, § 8; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, designated the previously existing provisions as subsections (a) and (b); inserted "or her" in the first sentence of subsections (a) and (b); in subsection (a), in the first sentence, substituted "each officer" for "probation supervisor", deleted "his" preceding "findings" in the middle, and substituted "a recommendation" for "his recommendation" near the end; in subsection (b), substituted "An officer" for "He" throughout, substituted "An officer" for "The probation supervisor" at the beginning of the first sentence and deleted "certified" preceding "copy", inserted "or parolee" in the second sentence, deleted the former third sentence, which read: "He shall make such reports in writing or otherwise as the court may require.", inserted "or parole" in the fourth sentence, and deleted the last sentence, which read: "He shall keep records on each probationer referred to him." See editor's note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, "the" was deleted following "It shall be the duty of" at the beginning of subsection (a).

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-29.1. Disposition of officer's records; confidentiality.

(a) When a convicted person is committed to an institution under the jurisdiction of the Department of Corrections, any presentence or post-sentence investigation or psychological evaluation compiled by an officer shall be forwarded to any division or office designated by the commissioner of corrections. Accompanying such document or evaluation shall be the case history form and the criminal history sheets from the Federal Bureau of Investigation or the Georgia Crime Information Center, if available, unless any such information has previously been sent to the Department of Corrections pursuant to Code Section 42-5-50. A copy of such documents shall be made available for the State Board of Pardons and Paroles. A copy of one or more of such documents, based on need, may be forwarded to another institution to which the defendant may be committed.

(b) The prison or institution receiving such documents shall maintain the confidentiality of the documents and the information contained therein and shall not send, release, or reveal them to any other person, institution, or agency without the express consent of the unit which originated or accumulated the documents. (Code 1981, § 42-8-29.1, enacted by Ga. L. 1983, p. 697, § 1; Ga. L. 1984, p. 22, § 42; Ga. L. 1989, p. 14, § 42; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (a), substituted "Department of Corrections" for "department" in the first and second sentences, in the first sentence, substituted "an officer" for "a probation supervisor or other probation official" in the middle and inserted "of corrections" at the end, substituted "such document or evaluation shall be" for "this document or evaluation will be" in the second sentence, substituted "such documents" for "these same documents" in the third sentence, substituted "such documents" for "these documents" in the last sentence and in the first sentence of subsection (b); in subsection (b), substituted ", release," for "them or release them" in the middle and deleted "probation" preceding "unit" near the end. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-30. Applicability of this article when private probation services are utilized.

In any county where the chief judge of the superior court, state court, municipal court, probate court, or magistrate court has provided for probation services for such court through agreement with a private corporation, enterprise, or agency or has established a county or municipal probation system for such court pursuant to Article 6 of this chapter, the provisions of this article relating to supervision services shall not apply to defendants sentenced in any such court. (Ga. L. 1956, p. 27, § 16; Ga. L. 1972, p. 604, § 12; Code 1981, § 42-8-30, as redesignated by Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, redesignated former Code Section 42-8-30.1 as present Code Section 42-8-30, and substituted "Article 6 of this chapter" for "Code Section 42-8-100" and deleted "probation" preceding "supervision" near the end. See editor's note for applicability.

Editor's notes. — Former Code Section 42-8-30 (Ga. L. 1956, p. 27, § 16; Ga. L. 1972, p. 604, § 12), relating to supervision of juvenile offenders by probation supervisors, was repealed by Ga. L. 2015, p. 422, § 4-1/HB 310, effective July 1, 2015.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-30.1. Redesignated.

Editor's notes. — Ga. L. 2015, p. 422, § 4-1/HB 310, effective July 1, 2015, redesignated former Code Section 42-8-30 as present Code Section 42-8-30.1.

42-8-31. Collection and disbursement of funds by officers; record-keeping; bank accounts.

No officer shall collect or disburse any funds whatsoever, except by written order of the court; and it shall be the duty of the officer to transmit a copy of such order to DCS not later than 15 days after it has been issued by the court. Every officer who collects or disburses any funds whatsoever shall faithfully keep the records of accounts as are required by DCS, which records shall be subject to inspection by DCS at any time. In every instance when a bank account is required, it shall be kept in the name of the Department of Community Supervision. (Ga. L. 1960, p. 1092, § 4; Ga. L. 1972, p. 604, § 15; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of this Code section for the former provisions, which read: "No probation supervisor shall collect or disburse any funds whatsoever, except by written order of the court; and it shall be the duty of the supervisor to transmit a copy of the order to the department not later than 15 days after it has been issued by the court. Every supervisor who collects or disburses any funds whatsoever shall faithfully keep the records of accounts as are required by the department, which records shall be subject to inspection by the department at any time. In every instance where a bank account is required, it shall be kept in the name of the 'State Probation Office.'" See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-32. Funds which may be collected by officers.

No officer shall be directed to collect any funds other than funds directed to be paid as the result of a criminal proceeding. (Ga. L. 1956, p. 27, § 14; Ga. L. 1958, p. 15, § 10; Ga. L. 1960, p. 1148, § 3; Ga. L. 1972, p. 604, § 10; Ga. L. 1989, p. 380, § 3; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "officer" for "probation supervisor" in this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-33. Audits of accounts of officers; records and reports of audits; bonds of auditors; refunding overpayment of fines, restitutions, or moneys owed.

(a) DCS shall make periodic audits of each officer who, by virtue of the officer's duties, has any moneys, fines, court costs, property, or other funds coming into the officer's control or possession or being disbursed by such officer. DCS shall keep a permanent record of the audit of each

officer's accounts on file. It shall be the duty of the employee of DCS conducting the audit to notify DCS in writing of any discrepancy of an illegal nature that might result in prosecution. DCS shall have the right to interview and make inquiry of certain selected payors or recipients of funds, as it may choose, without notifying the officer, to carry out the purposes of the audit. The employee who conducts the audit shall be required to give bond in such amount as may be set by DCS, in the same manner and for the same purposes as provided under Code Section 42-8-26 for the bonds of officers. The bond shall bind the employee and the employee's surety in the performance of the employee's duties.

(b) Any overpayment of fines, restitutions, or other moneys owed as a condition of probation shall not be refunded to the probationer if the amount of the overpayment is less than $5.00. (Ga. L. 1960, p. 1092, § 2; Ga. L. 1965, p. 413, § 5; Ga. L. 1967, p. 86, § 5; Ga. L. 1972, p. 604, § 13; Ga. L. 1987, p. 452, § 1; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "DCS" for "The department" and "the department" throughout subsection (a); in subsection (a), substituted "officer" for "probation supervisor" in the first and fourth sentences, in the first sentence, substituted "the officer's" for "his" twice, and substituted "disbursed by such officer" for "him. The department" at the end, in the second sentence, added "DCS" at the beginning and substituted "officer's" for "probation supervisor's", substituted "officers" for "probation supervisors" at the end of the next-to-last sentence, and substituted "the employee's" for "his" twice in the last sentence; and substituted "the overpayment" for "such overpayment" in subsection (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-34. Sentencing hearings and determinations; presentence investigations; fees, fines, and costs; post-conviction, presentence bond; continuing jurisdiction; transferal of probation supervision.

(a) Any court of this state which has original jurisdiction of criminal actions, except municipal courts and probate courts, in which the defendant in a criminal case has been found guilty upon verdict or plea or has been sentenced upon a plea of nolo contendere, except for an offense punishable by death or life imprisonment, may, at a time to be determined by the court, hear and determine the question of the probation of such defendant.

(b) Prior to the sentencing hearing, the court may refer the case to an officer of the circuit in which the court is located for investigation and recommendation. The court, upon such reference, shall direct an officer to make an investigation and to report to the court, in writing at a specified time, upon the circumstances of the offense and the criminal record, social history, and present condition of the defendant, together

with the officer's recommendation; and it shall be the duty of such officer to carry out the directive of the court.

(c) Subject to the provisions of subsection (a) of Code Section 17-10-1 and subsection (f) of Code Section 17-10-3, if it appears to the court upon a hearing of the matter that the defendant is not likely to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court in its discretion shall impose sentence upon the defendant but may stay and suspend the execution of the sentence or any portion thereof or may place him or her on probation under the supervision and control of the officer for the duration of the sentence. The period of probation or suspension shall not exceed the maximum sentence of confinement which could be imposed on the defendant.

(d)(1) In every case that a court of this state or any other state sentences a defendant to probation or any pretrial release or diversion program under the supervision of DCS, in addition to any fine or order of restitution imposed by the court, there shall be imposed a probation fee as a condition of probation, release, or diversion in the amount equivalent to $23.00 per each month under supervision, and in addition, a one-time fee of $50.00 if such defendant was convicted of any felony. The probation fee may be waived or amended after administrative process by DCS and approval of the court, or upon determination by the court, as to the undue hardship, inability to pay, or any other extenuating factors which prohibit collection of the fee; provided, however, that the imposition of sanctions for failure to pay fees shall be within the discretion of the court through judicial process or hearings. Probation fees shall be waived on probationers incarcerated or detained in a Department of Corrections or other confinement facility which prohibits employment for wages. All probation fees collected by DCS shall be paid into the general fund of the state treasury, except as provided in subsection (f) of Code Section 17-15-13, relating to sums to be paid into the Georgia Crime Victims Emergency Fund. Any fees collected by the court under this paragraph shall be remitted not later than the last day of the month after such fee is collected to the Georgia Superior Court Clerks' Cooperative Authority for deposit into the general fund of the state treasury.

(2) In addition to any other provision of law, any person convicted of a violation of Code Section 40-6-391 or subsection (b) of Code Section 16-13-2 who is sentenced to probation or a suspended sentence by a municipal, magistrate, probate, recorder's, mayor's, state, or superior court shall also be required by the court to pay a one-time fee of $25.00. The clerk of court, or if there is no clerk the

person designated to collect fines, fees, and forfeitures for such court, shall collect such fee and remit the same not later than the last day of the month after such fee is collected to the Georgia Superior Court Clerks' Cooperative Authority for deposit into the general fund of the state treasury.

(3) In addition to any fine, fee, restitution, or other amount ordered, the sentencing court may also impose as a condition of probation for felony criminal defendants sentenced to a day reporting center an additional charge, not to exceed $10.00 per day for each day such defendant is required to report to a day reporting center; provided, however, that no fee shall be imposed or collected if the defendant is unemployed or has been found indigent by the sentencing court. The charges required by this paragraph shall be paid by the probationer directly to DCS. Funds collected by DCS pursuant to this subsection shall only be used by DCS in the maintenance and operation of the day reporting center program.

(e) The court may, in its discretion, require the payment of a fine or costs, or both, as a condition of probation.

(f) During the interval between the conviction or plea and the hearing to determine the question of probation, the court may, in its discretion, either order the confinement of the defendant without bond or may permit his or her release on bond, which bond shall be conditioned on his appearance at the hearing and shall be subject to the same rules as govern appearance bonds. Any time served in confinement shall be considered a part of the sentence of the defendant.

(g) The sentencing judge shall not lose jurisdiction over any person placed on probation during the term of the person's probated sentence. The judge is empowered to revoke any or all of the probated sentence, rescind any or all of the sentence, or, in any manner deemed advisable by the judge, modify or change the probated sentence, including ordering the probationer into the sentencing options system, as provided in Article 6 of Chapter 3 of this title, at any time during the period of time prescribed for the probated sentence to run. In addition, when the judge is considering revoking a probated sentence in order to require the defendant to enter a drug court division, mental health court division, or veterans court division and the length of the original sentence is insufficient to authorize such revocation, the defendant may voluntarily agree to an extension of his or her original sentence within the maximum sentence allowed by law, notwithstanding subsection (f) of Code Section 17-10-1. Such extension shall be for a period not to exceed three years, and upon completion of such specific court division program, the court may modify the terms of probation in accordance with subparagraph (a)(5)(A) of Code Section 17-10-1.

(h) If a defendant is placed on probation in a county of a judicial circuit other than the one in which such defendant resides for commit-

ting any misdemeanor offense, such defendant may, when specifically ordered by the court, have probation supervision transferred to the judicial circuit of the county in which the defendant resides. (Code 1933, § 27-2702; Ga. L. 1939, p. 285, § 4; Ga. L. 1941, p. 481, § 1; Ga. L. 1950, p. 352, §§ 1, 2; Ga. L. 1956, p. 27, § 8; Ga. L. 1958, p. 15, § 8; Ga. L. 1960, p. 1148, § 1; Ga. L. 1972, p. 604, § 7; Ga. L. 1980, p. 1136, § 1; Ga. L. 1988, p. 988, § 1; Ga. L. 1989, p. 381, §§ 2, 3; Ga. L. 1992, p. 3221, § 5; Ga. L. 1993, p. 426, § 1; Ga. L. 1998, p. 840, § 2; Ga. L. 1999, p. 1271, § 1; Ga. L. 2000, p. 1643, § 2; Ga. L. 2001, p. 4, § 42; Ga. L. 2001, p. 94, § 6; Ga. L. 2004, p. 775, § 3; Ga. L. 2005, p. ES3, § 26; Ga. L. 2005, p. 60, § 42/HB 95; Ga. L. 2009, p. 124, § 1/HB 344; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (a), deleted "juvenile courts," following "criminal actions, except" and deleted a comma following "municipal courts" near the middle; in subsection (b), in the first sentence, inserted "sentencing" near the beginning, and substituted "an officer" for "the probation supervisor", in the second sentence, substituted "an officer" for "the supervisor" near the middle, substituted "officer's recommendation" for "supervisor's recommendation", and substituted "such officer" for "the supervisor" near the end; inserted "or her" in the first sentence of subsections (c) and (f); in subsection (c), in the first sentence, substituted "officer" for "probation supervisor" near the end and substituted "the sentence" for "such probation" at the end; substituted "DCS" for "the department" throughout paragraph (d)(1); and, in paragraph (d)(1), substituted "if such defendant" for "where such defendant" near the end of the first sentence, and substituted "Department of Corrections" for "departmental" in the third sentence; substituted "condition of probation" for "condition precedent to probation" in subsection (e); in subsection (g), substituted "Article 6 of Chapter 3 of this title" for "Article 9 of this chapter" near the end of the second sentence and added the third and fourth sentences; in subsection (h), substituted "If a defendant" for "Notwithstanding any provision of this Code or any rule or regulation to the contrary, if a defendant" at the beginning, substituted "such defendant resides" for "he resides" in the middle, deleted "his" preceding "probation supervision", and substituted "the defendant" for "he" near the end. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-34.1. Revocation of probated or suspended sentence; alternative sentencing; burden of proof; length of probation supervision.

(a) For the purposes of this Code section, the term "special condition of probation or suspension of the sentence" means a condition of a probated or suspended sentence which:

(1) Is expressly imposed as part of the sentence in addition to general conditions of probation and court ordered fines and fees; and

(2) Is identified in writing in the sentence as a condition the violation of which authorizes the court to revoke the probation or

suspension and require the defendant to serve up to the balance of the sentence in confinement.

(b) A court may not revoke any part of any probated or suspended sentence unless the defendant admits the violation as alleged or unless the evidence produced at the revocation hearing establishes by a preponderance of the evidence the violation or violations alleged.

(c) At any revocation hearing, upon proof that the defendant has violated any general provision of probation or suspension other than by commission of a new felony offense, the court shall consider the use of alternatives to include community service, diversion centers, probation detention centers, special alternative incarceration, or any other alternative to confinement deemed appropriate by the court or as provided by the state or county. In the event the court determines that the defendant does not meet the criteria for such alternatives, the court may revoke the balance of probation or not more than two years in confinement, whichever is less.

(d) If the violation of probation or suspension alleged and proven by a preponderance of the evidence or the defendant's admission is the commission of a felony offense, the court may revoke no more than the lesser of the balance of probation or the maximum time of the sentence authorized to be imposed for the felony offense constituting the violation of the probation. For purposes of this Code section, the term 'felony offense' means:

(1) A felony offense;

(2) A misdemeanor offense committed in another state on or after July 1, 2010, the elements of which are proven by a preponderance of evidence showing that such offense would constitute a felony if the act had been committed in this state; or

(3) A misdemeanor offense committed in another state on or after July 1, 2010, that is admitted to by the defendant who also admits that such offense would be a felony if the act had been committed in this state.

(e) If the violation of probation or suspension alleged and proven by a preponderance of the evidence or the defendant's admission is the violation of a special condition of probation or suspension of the sentence, the court may revoke the probation or suspension of the sentence and require the defendant to serve the balance or portion of the balance of the original sentence in confinement.

(f) The payment of restitution or reparation, costs, or fines ordered by the court may be payable in one lump sum or in periodic payments, as determined by the court after consideration of all the facts and circumstances of the case and of the defendant's ability to pay. Such

payments shall, in the discretion of the sentencing judge, be made either to the clerk of the sentencing court or, if the sentencing court is a probate court, state court, or superior court, to the DCS office serving such court.

(g) In no event shall an offender be supervised on probation for more than a total of two years for any one offense or series of offenses arising out of the same transaction, whether before or after confinement, except as provided by paragraph (2) of subsection (a) of Code Section 17-10-1 and subsection (g) of Code Section 42-8-34. (Code 1981, § 42-8-34.1, enacted by Ga. L. 1988, p. 1911, § 1; Ga. L. 1989, p. 855, § 1; Ga. L. 1992, p. 3221, § 6; Ga. L. 2001, p. 94, § 7; Ga. L. 2010, p. 318, § 1/HB 329; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (c), deleted "intensive probation," following "community service," in the first sentence, and substituted "such alternatives" for "said alternatives" in the second sentence; substituted "the DCS office serving such" for "the probation office serving said" near the end of the last sentence in subsection (f); and added "and subsection (g) of Code Section 42-8-34" at the end of subsection (g). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATIONS

General Considerations

Violation not established by preponderance of evidence. — Revocation of probation based on a child molestation charge was error because competent evidence showed that the defendant's brother saw the defendant, fully clothed, asleep on the sofa with a fully clothed child in the defendant's lap, and did not see them doing anything wrong. Hunt v. State, 327 Ga. App. 692, 761 S.E.2d 99 (2014).

Revocation based on misdemeanor. Resentencing on revocation of probation was necessary as the trial court could not revoke more than two years of probation based on the remaining technical violations for failure to pay court-ordered monies. Hunt v. State, 327 Ga. App. 692, 761 S.E.2d 99 (2014).

42-8-34.2. Delinquency of defendant in payment of fines, costs, or restitution or reparation; costs of garnishment.

(a) In the event that a defendant is delinquent in the payment of fines, costs, or restitution or reparation, as was ordered by the court as a condition of probation, the defendant's officer shall be authorized, but shall not be required, to execute a sworn affidavit wherein the amount of arrearage is set out. In addition, the affidavit shall contain a succinct statement as to what efforts DCS has made in trying to collect the delinquent amount. The affidavit shall then be submitted to the sentencing court for approval. Upon signature and approval of the

court, such arrearage shall then be collectable through issuance of a writ of fieri facias by the clerk of the sentencing court; and DCS may enforce such collection through any judicial or other process or procedure which may be used by the holder of a writ of execution arising from a civil action.

(b) This Code section provides the state with remedies in addition to all other remedies provided for by law; and nothing in this Code section shall preclude the use of any other or additional remedy in any case.

(c) No clerk of any court shall be authorized to require any deposit of cost or any other filing or service fee as a condition to the filing of a garnishment action or other action or proceeding authorized under this Code section. In any such action or proceeding, however, the clerk of the court in which the action is filed shall deduct and retain all proper court costs from any funds paid into the treasury of the court, prior to any other disbursement of such funds so paid into court. (Code 1981, § 42-8-34.2, enacted by Ga. L. 1990, p. 1331, § 1; Ga. L. 1991, p. 94, § 42; Ga. L. 1991, p. 1051, § 1; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (a), substituted "the defendant's officer shall be authorized, but shall not be required" for "the defendant's probation officer is authorized, but not required" in the first sentence, substituted "DCS" for "the department" in the second and fourth sentences, and substituted "such arrearage" for "said arrearage" in the fourth sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-35. Terms and conditions of probation; supervision.

(a) The court shall determine the terms and conditions of probation and may provide that the probationer shall:

(1) Avoid injurious and vicious habits;

(2) Avoid persons or places of disreputable or harmful character;

(3) Report to the officer as directed;

(4) Permit the officer to visit the probationer at the probationer's home or elsewhere;

(5) Work faithfully at suitable employment insofar as may be possible;

(6) Remain within a specified location; provided, however, that the court shall not banish a probationer to any area within this state:

(A) That does not consist of at least one entire judicial circuit as described by Code Section 15-6-1; or

(B) In which any service or program in which the probationer must participate as a condition of probation is not available;

(7) Make reparation or restitution to any aggrieved person for the damage or loss caused by the probationer's offense, in an amount to be determined by the court. Unless otherwise provided by law, no reparation or restitution to any aggrieved person for the damage or loss caused by the probationer's offense shall be made if the amount is in dispute unless the same has been adjudicated;

(8) Make reparation or restitution as reimbursement to a municipality or county for the payment for medical care furnished the person while incarcerated pursuant to the provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local governmental unit for the provision of medical care shall be made if the amount is in dispute unless the same has been adjudicated;

(9) Repay the costs incurred by any municipality or county for wrongful actions by an inmate covered under the provisions of paragraph (1) of subsection (a) of Code Section 42-4-71;

(10) Support the probationer's legal dependents to the best of the probationer's ability;

(11) Violate no local, state, or federal laws and be of general good behavior;

(12) If permitted to move or travel to another state, agree to waive extradition from any jurisdiction where the probationer may be found and not contest any effort by any jurisdiction to return the probationer to this state;

(13) Submit to evaluations and testing relating to rehabilitation and participate in and successfully complete rehabilitative programming as directed by DCS;

(14) Wear a device capable of tracking the location of the probationer by means including electronic surveillance or global positioning satellite systems. DCS shall assess and collect fees from the probationer for such monitoring at levels set by regulation of the Board of Community Supervision;

(15) Complete a residential or nonresidential program for substance abuse or mental health treatment as indicated by a risk and needs assessment;

(16) Agree to the imposition of graduated sanctions when, in the discretion of the officer, the probationer's behavior warrants a graduated sanction; and

(17) Pay for the cost of drug screening. DCS shall assess and collect fees from the probationer for such screening at levels set by regulation of the Board of Community Supervision.

(b) In determining the terms and conditions of probation for a probationer who has been convicted of a criminal offense against a victim who is a minor or dangerous sexual offense as those terms are defined in Code Section 42-1-12, the court may provide that the probationer shall be:

(1) Prohibited from entering or remaining present at a victim's school, place of employment, place of residence, or other specified place at times when a victim is present or from loitering in areas where minors congregate, child care facilities, churches, or schools as those terms are defined in Code Section 42-1-12;

(2) Required, either in person or through remote monitoring, to allow viewing and recording of the probationer's incoming and outgoing e-mail, history of websites visited and content accessed, and other Internet based communication;

(3) Required to have periodic unannounced inspections of the contents of the probationer's computer or any other device with Internet access, including the retrieval and copying of all data from the computer or device and any internal or external storage or portable media and the removal of such information, computer, device, or medium; and

(4) Prohibited from seeking election to a local board of education.

(c) The supervision provided for under subsection (b) of this Code section shall be conducted by an officer, law enforcement officer, or computer information technology specialist working under the supervision of an officer or law enforcement agency. (Ga. L. 1956, p. 27, § 10; Ga. L. 1958, p. 15, § 11A; Ga. L. 1965, p. 413, § 3; Ga. L. 1992, p. 2125, § 4; Ga. L. 1992, p. 2942, § 2; Ga. L. 2004, p. 761, § 3; Ga. L. 2004, p. 775, § 4; Ga. L. 2006, p. 379, § 25/HB 1059; Ga. L. 2006, p. 425, § 1/HB 692; Ga. L. 2008, p. 810, § 5/SB 474; Ga. L. 2012, p. 899, § 7-8/HB 1176; Ga. L. 2013, p. 222, § 18/HB 349; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "officer" for "probation supervisor" in paragraphs (a)(3) and (a)(16); substituted "officer" for "supervisor" in paragraph (a)(4); substituted "this state" for "the state" in the introductory paragraph of (a)(6); substituted "DCS" for "the department" and "The department" in paragraphs (a)(13) and (a)(14); substituted "of the Board of Community Supervision" for "by the department" in paragraph (a)(14); in paragraph (a)(17), in the second sentence, substituted "DCS" for "The Department of Corrections" and substituted "Board of Community Supervision" for "Department of Corrections"; and substituted "an officer" for "a probation officer" twice in subsection (c). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Privatization of probation services. — Trial court erred in holding that the imposition of electronic monitoring on misdemeanor defendants supervised by private probation servicing companies was prohibited. Sentinel Offender Svcs., LLC v. Glover, No. S14A1271, S14X1272, 2014 Ga. LEXIS 940 (Nov. 24, 2014).

Probation Terms and Conditions

1. In General

Collection of electronic monitoring fees by private probation service. — Trial court erred by finding that electronic monitoring fees imposed by the sentencing court and collected by a private probation service for monitoring services rendered during a probationer's original term of sentence were prohibited because only when electronic monitoring was unlawfully imposed by the court on a misdemeanor probationer after the expiration of the probationer's original sentence would such fees potentially be recoverable. Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456 (2014).

42-8-35.1. Special alternative incarceration—probation boot camp unit.

(a) Notwithstanding any other terms or conditions of probation which may be imposed, a court may provide that probationers sentenced for felony offenses to a period of time of not less than one year on probation as a condition of probation shall satisfactorily complete a program of confinement in a special alternative incarceration—probation boot camp unit of the Department of Corrections for a period of 120 days computed from the time of initial confinement in the unit; provided, however, that the Department of Corrections may release the defendant upon service of 90 days in recognition of excellent behavior.

(b) Before a court may place such condition upon the sentence, an initial investigation shall be completed by the officer which indicates that the probationer is qualified for such treatment in that the individual does not appear to be physically or mentally disabled in a way that would prevent him or her from strenuous physical activity, that the individual has no obvious contagious diseases, that the individual is not less than 17 years of age nor more than 30 years of age at the time of sentencing, and that the Department of Corrections has granted provisional approval of the placement of the individual in the special alternative incarceration-probation boot camp unit.

(c) In every case when an individual is sentenced under the terms of this Code section, the sentencing court shall, within its probation order, direct the Department of Corrections to arrange with the sheriff's office

in the county of incarceration to have the individual delivered to a designated unit of the Department of Corrections within a specific date not more than 15 days after the issuance of such probation order by the court.

(d) At any time during the individual's confinement in the unit, but at least five days prior to his or her expected date of release, the Department of Corrections shall certify to the trial court as to whether the individual has satisfactorily completed the condition of probation provided in subsection (a) of this Code section.

(e) Upon the receipt of a satisfactory report of performance in the program from the Department of Corrections, the trial court shall release the individual from confinement in the special alternative incarceration—probation boot camp unit. However, the receipt of an unsatisfactory report shall be grounds for revocation of the probated sentence as would any other violation of a condition or term of probation.

(f) The satisfactory report of performance in the program from the Department of Corrections shall, in addition to the other requirements specified in this Code section, require participation of the individual confined in the unit in such adult education courses necessary to attain the equivalency of a grade five competency level as established by the State Board of Education for elementary schools. Those individuals who are mentally disabled as determined by initial testing shall be exempt from mandatory participation. After the individual is released from the unit, it shall be a special condition of probation that the individual participate in an education program in the community until grade five level competency is achieved or active probation supervision terminates. It shall be the duty of the Department of Corrections to certify to the trial court that such individual has satisfactorily completed such condition of probation while on active probation supervision. The receipt of an unsatisfactory report may be grounds for revocation of the probated sentence as would any other violation of a condition or term of probation. Under certain circumstances, the probationer may be exempt from this requirement if it is determined by the officer that community education resources are inaccessible to the probationer. (Ga. L. 1982, p. 1097, § 1; Code 1981, § 42-8-35.1, enacted by Ga. L. 1982, p. 1097, § 2; Ga. L. 1983, p. 3, § 31; Ga. L. 1984, p. 446, § 1; Ga. L. 1987, p. 654, § 1; Ga. L. 1991, p. 1751, § 1; Ga. L. 1993, p. 444, § 1; Ga. L. 1993, p. 1664, § 1; Ga. L. 1995, p. 1302, § 14; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "Department of Corrections" for "department" throughout; in subsection (a), in the first sentence, substituted "Notwithstanding any other terms or conditions of probation which may be imposed, a court may provide" for "In addition to any other terms or condi-

tions of probation provided for under this chapter, the trial judge may provide", deleted "committed on or after July 1, 1993," following "felony offenses", substituted "probation shall" for "probation must", and substituted "that the Department of Corrections" for "the department"; in subsection (b), substituted "court may place such condition upon the sentence, an initial investigation shall be completed by the officer which indicates" for "court can place this condition upon the sentence, an initial investigation will be completed by the probation officer which will indicate" near the beginning, and inserted "or her" and in subsection (d); substituted "when an individual" for "where an individual" near the beginning of subsection (c); substituted "the condition of probation provided in subsection (a) of this Code section" for "this condition of probation" in subsection (d); substituted "report shall" for "report will" in the second sentence of subsection (e); in subsection (f), substituted "testing shall be exempt" for "testing are exempt" in the second sentence, substituted "such condition" for "this condition" near the middle of the fourth sentence, and deleted "probation" preceding "officer" in the last sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-35.2. Special term of probation; when imposed; revocation; suspension.

(a) Notwithstanding any other provisions of law, the court, when imposing a sentence of imprisonment after a conviction of a violation of subsection (b) or (d) of Code Section 16-13-30 or after a conviction of a violation of Code Section 16-13-31, shall impose a special term of probation of three years in addition to such term of imprisonment; provided, however, that upon a second or subsequent conviction of a violation of the provisions of such Code sections, the special term of probation shall be six years in addition to any term of imprisonment.

(b) A special term of probation imposed under this Code section may be revoked if the terms and conditions of probation are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special term of probation and the resulting new term of imprisonment shall not be diminished by the time which was spent on special probation. A person whose special term of probation has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special term of probation provided for in this Code section shall be in addition to, and not in lieu of, any other probation provided for by law and shall be supervised in the same manner as other probations as provided in this chapter.

(c) Upon written application by the probationer to the trial court, the court may, in its discretion, suspend the balance of any special term of probation, provided that at least one-half of such special term of probation has been completed and all fines associated with the original sentence have been paid and all other terms of the original sentence and the terms of the special probation have been met by the probationer. (Ga. L. 1982, p. 2283, § 1; Code 1981, § 42-8-35.1, enacted by

Ga. L. 1982, p. 2283, § 2; Code 1981, § 42-8-35.2, as redesignated by Ga. L. 1983, p. 3, § 31; Ga. L. 1997, p. 143, § 42; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (a), in the proviso, inserted "that" and deleted "as stated in this subsection" following "Code sections"; and substituted "such special" for "said special" in the middle of subsection (c). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-35.3. Conditions of probation for stalking or aggravated stalking.

Editor's notes. — Ga. L. 2015, p. 422, § 4-1/HB 310, effective July 1, 2015, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-35.4. Confinement in probation detention center.

(a) Notwithstanding any other terms and conditions of probation which may be imposed, a court may require that a defendant convicted of a felony and sentenced to a period of not less than one year on probation or a defendant who has been previously sentenced to probation for a forcible misdemeanor as defined in paragraph (7) of Code Section 16-1-3 or a misdemeanor of a high and aggravated nature and has violated probation or other probation alternatives and is subsequently sentenced to a period of not less than one year on probation shall complete satisfactorily, as a condition of such probation, a program of confinement, not to exceed 180 days, in a probation detention center. Probationers so sentenced shall be required to serve the period of confinement, not to exceed 180 days, specified in the court order.

(b) The court shall determine that the defendant is at least 17 years of age at the time of sentencing.

(c) During the period of confinement, the Department of Corrections may transfer the probationer to other facilities in order to provide needed physical and mental health care or for other reasons essential to the care and supervision of the probationer or as necessary for the effective administration and management of its facilities. (Code 1981, § 42-8-35.4, enacted by Ga. L. 1995, p. 627, § 1; Ga. L. 2009, p. 99, § 1/HB 226; Ga. L. 2012, p. 899, § 7-9/HB 1176; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (a), in the first sentence, substituted "Notwithstanding any other terms and conditions of proba-

tion which may be imposed, a court" for "In addition to any other terms and conditions of probation provided for in this article, the trial judge" at the beginning, and substituted "such probation" for "that probation" near the end; and substituted "Department of Corrections" for "department" in subsection (c). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-35.5. Confinement in probation diversion center.

(a) Notwithstanding any other terms and conditions of probation which may be imposed, a court may require that probationers sentenced to a period of not less than one year on probation shall satisfactorily complete, as a condition of such probation, a program in a probation diversion center. Probationers so sentenced shall be required to serve a period of confinement as specified in the court order, which confinement period shall be computed from the date of initial confinement in the diversion center.

(b) The court shall determine that the defendant is at least 17 years of age at the time of sentencing, is capable both physically and mentally of maintaining paid employment in the community, and does not unnecessarily jeopardize the safety of the community.

(c) The Department of Corrections may assess and collect room and board fees from diversion center program participants at a level set by the Department of Corrections. (Code 1981, § 42-8-35.5, enacted by Ga. L. 1995, p. 627, § 1; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (a), in the first sentence, substituted "Notwithstanding any other terms and conditions of probation which may be imposed, a court" for "In addition to any other terms and conditions of probation provided in this article, the trial judge" at the beginning, substituted "such probation" for "that probation" near the end, substituted "shall be required" for "will be required" near the beginning of the second sentence; and substituted "Department of Corrections" for "department" twice in subsection (c). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-35.6. Family violence intervention program participation as condition of probation; cost borne by defendant.

Editor's notes. — Ga. L. 2015, p. 422, § 4-1/HB 310, effective July 1, 2015, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

Cited in Sentinel Offender Svcs., LLC v. Glover, No. S14A1271, S14X1272, 2014 Ga. LEXIS 940 (Nov. 24, 2014).

42-8-35.7. Drug and alcohol screening of probationers.

Unless the court or State Board of Pardons and Paroles has ordered more frequent screenings, drug and alcohol screenings shall be administered in accordance with DCS rules and regulations. (Code 1981, § 42-8-35.7, enacted by Ga. L. 2004, p. 775, § 5; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of this Code section for the former provisions, which read: "Unless the court has ordered more frequent such screenings, it shall be the duty of each probation supervisor to administer or have administered a drug and alcohol screening not less than once every 60 days to any person who is placed on probation and who, as a condition of such probation, is required to undergo regular, random drug and alcohol screenings, provided that the drug and alcohol screenings required by this Code section shall be performed only to the extent that necessary funds therefor are appropriated in the state budget." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

Cited in Sentinel Offender Svcs., LLC v. Glover, No. S14A1271, S14X1272, 2014 Ga. LEXIS 940 (Nov. 24, 2014).

42-8-36. Duty of probationer to inform officer of residence and whereabouts; violations; tolling; unpaid moneys.

(a)(1) It shall be the duty of a probationer, as a condition of probation, to keep his or her officer informed as to his or her residence. Upon the recommendation of the officer, the court may also require, as a condition of probation and under such terms as the court deems advisable, that the probationer keep the officer informed as to his or her whereabouts.

(2) The running of a probated sentence shall be tolled upon:

(A) The failure of a probationer to report to his or her officer as directed or failure to appear in court for a probation revocation hearing; either of such failures may be evidenced by an affidavit from the officer setting forth such failure; or

(B) The filing of a return of non est inventus or other return to a warrant, for the violation of the terms and conditions of probation,

that the probationer cannot be found in the county that appears from the records of the officer to be the probationer's county of residence. Any officer authorized by law to issue or serve warrants may return the warrant for the absconded probationer showing non est inventus.

(3) The effective date of the tolling of the sentence shall be the date the court enters a tolling order and shall continue until the probationer shall personally report to the officer, is taken into custody in this state, or is otherwise available to the court.

(4) Any tolled period of time shall not be included in computing creditable time served on probation or as any part of the time that the probationer was sentenced to serve.

(b) Any unpaid fines, restitution, or any other moneys owed as a condition of probation shall be due when the probationer is arrested; but, if the entire balance of his or her probation is revoked, all the conditions of probation, including moneys owed, shall be negated by the probationer's imprisonment. If only part of the balance of the probation is revoked, the probationer shall still be responsible for the full amount of the unpaid fines, restitution, and other moneys upon his or her return to probation after release from imprisonment. (Ga. L. 1958, p. 15, § 9; Ga. L. 1982, p. 3, § 42; Ga. L. 1984, p. 1317, § 1; Ga. L. 1986, p. 492, § 1; Ga. L. 1987, p. 455, § 1; Ga. L. 1989, p. 452, § 1; Ga. L. 1992, p. 6, § 42; Ga. L. 2010, p. 557, § 1/HB 859; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "officer" for "probation supervisor" throughout this Code section; in subsection (b), inserted "or her" twice, and substituted "the probationer's" for "his" in the first sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

Tolling of a probated sentence.

Under current Georgia statutes, the tolling of a misdemeanor probationer's sentence is not permitted and courts utilizing probation systems established pursuant to O.C.G.A. § 42-8-100(g)(1) are specifically precluded from applying the provisions of the State-wide Probation Act, O.C.G.A. § 42-8-20 et seq., including those pertaining to tolling, to the defendants the courts sentence. Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456 (2014).

Georgia Supreme Court held that the private probation statutory framework did not allow for the tolling of misdemeanor probationers' sentences and to the extent Georgia courts have recognized O.C.G.A. § 42-8-36 as a basis for allowing courts utilizing probation systems established pursuant to O.C.G.A. § 42-8-100(g)(1) to toll a probationer's sentence, such analysis was in error and was disapproved. Sentinel Offender Svcs., LLC v. Glover, No. S14A1271, S14X1272, 2014 Ga. LEXIS 940 (Nov. 24, 2014).

42-8-37. Effect of termination of probated portion of sentence; review of cases of persons receiving probated sentence; reports.

(a) Upon the termination of the probated portion of a sentence, the probationer shall be released from probation and shall not be liable to sentence for the crime for which probation was allowed; provided, however, that the foregoing shall not be construed to prohibit the conviction and sentencing of the probationer for the subsequent commission of the same or a similar offense or for the subsequent continuation of the offense for which he or she was previously sentenced.

(b) The court may at any time cause the probationer to appear before it to be admonished or commended and, when satisfied that its action would be for the best interest of justice and the welfare of society, may discharge the probationer from further supervision.

(c) The case of each person receiving a probated sentence of more than two years shall be reviewed by the officer responsible for such case after service of two years on probation, and a written report of the probationer's progress shall be submitted to the sentencing court along with the officer's recommendation as to early termination. Each such case shall be reviewed and a written report submitted annually thereafter until the termination, expiration, or other disposition of the case. (Ga. L. 1956, p. 27, § 11; Ga. L. 1972, p. 604, § 9; Ga. L. 1985, p. 516, § 1; Ga. L. 2012, p. 899, § 7-10/HB 1176; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "interest" for "interests" in subsection (b); in subsection (c), in the first sentence, substituted "officer responsible for such case" for "probation supervisor responsible for that case" and substituted "officer's" for "supervisor's" near the end. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-38. Arrest or graduated sanctions for probationers violating terms; hearing; disposition of charge; procedure when probation revoked in county other than that of conviction.

(a) Whenever, within the period of probation, an officer believes that a probationer under his or her supervision has violated the terms of probation in a material respect, if graduated sanctions have been made a condition of probation by the court, the officer may impose graduated sanctions as set forth in Code Section 42-8-23 to address the specific conduct leading to such violation or, if the circumstances warrant, may

arrest the probationer without warrant, wherever found, and return the probationer to the court granting the probation or, if under supervision in a county or judicial circuit other than that of conviction, to a court of equivalent original criminal jurisdiction within the county wherein the probationer resides for purposes of supervision. Any officer authorized by law to issue warrants may issue a warrant for the arrest of the probationer upon the affidavit of one having knowledge of the alleged violation, returnable forthwith before the court in which revocation proceedings are being brought.

(b) The court, upon the probationer being brought before it, may commit the probationer or release the probationer with or without bail to await further hearing, or it may dismiss the charge. If the charge is not dismissed at this time, the court shall give the probationer an opportunity to be heard fully at the earliest possible date on his or her own behalf, in person or by counsel, provided that, if the revocation proceeding is in a court other than the court of the original criminal conviction, the sentencing court shall be given ten days' written notice prior to a hearing on the merits.

(c) After the hearing, the court may revoke, modify, or continue the probation. If the probation is revoked, the court may order the execution of the sentence originally imposed or of any portion thereof. In such event, the time that the defendant has served under probation shall be considered as time served and shall be deducted from and considered a part of the time he or she was originally sentenced to serve.

(d) In cases where the probation is revoked in a county other than the county of original conviction, the clerk of court in the county revoking probation may record the order of revocation in the minutes of the court, which recordation shall constitute sufficient permanent record of the proceedings in such court. The clerk shall send copies of the order revoking probation to DCS and the Department of Corrections to serve as a temporary commitment and shall send the original order revoking probation and all other papers pertaining thereto to the county of original conviction to be filed with the original records. The clerk of court of the county of original conviction shall then issue a formal commitment to the Department of Corrections. (Ga. L. 1956, p. 27, § 12; Ga. L. 1960, p. 857, § 1; Ga. L. 1966, p. 440, § 1; Ga. L. 2012, p. 899, § 7-11/HB 1176; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (a), in the first sentence, substituted "an officer" for "a probation supervisor" near the beginning, substituted "violated the terms of probation" for "violated his or her probation" near the middle, substituted "officer" for "probation supervisor" in the middle; in subsection (b), in the first sentence, substituted "the probationer" for "him" twice, and added a comma following "hearing", inserted "or her" in the second sentence; inserted "or she" in the last sentence of subsection (c); and in subsection (d), in the first sentence, substituted "minutes of the court" for "judge's minute docket" in the

middle, and substituted "such court" for "that court" near the end, substituted "DCS and the Department of Corrections" for "the department" in the second sentence, and substituted "Department of Corrections" for "department" in the last sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-39. Suspension of sentence does not place defendant on probation.

In all criminal cases in which the defendant is found guilty or in which a plea of guilty or of nolo contendere is entered and in which the court after imposing sentence further provides that the execution of the sentence shall be suspended, such provision shall not have the effect of placing the defendant on probation as provided in this article. (Ga. L. 1956, p. 27, § 13; Ga. L. 1960, p. 1148, § 2; Ga. L. 1965, p. 413, § 4; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "court" for "trial judge" in the middle of this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-40. Confidentiality of reports, files, records, and other information related to supervision; exemption from subpoena; declassification.

All reports, files, records, and information of whatever kind relative to the supervision of probationers and parolees are declared to be confidential and shall be available only to the probation system officials, the judge handling a particular case, the Board of Community Supervision, DCS, the Department of Corrections, the Department of Juvenile Justice, and the State Board of Pardons and Paroles, as appropriate. Such reports, files, records, and information shall not be subject to process of subpoena; provided, however, that the commissioner of community supervision may by written order declassify any such records. (Ga. L. 1956, p. 27, § 19; Ga. L. 1958, p. 15, § 11; Ga. L. 2003, p. 421, § 1; Ga. L. 2011, p. 620, § 1/SB 214; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-41. Cooperation of state and local entities with probation officials.

All state and local departments, agencies, boards, bureaus, commissions, and committees shall cooperate with officers. (Ga. L. 1956, p. 27, § 17; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "officers" for "the probation officials" in this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-42. Provision of office space and clerical help by DCS and counties.

DCS may provide office space and clerical help wherever needed. The counties of this state shall cooperate in this respect and, wherever possible, shall furnish office space if needed. (Ga. L. 1956, p. 27, § 18; Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "DCS" for "The department" in the first sentence of this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-43. Liberal construction of article.

This article shall be liberally construed so that its purposes may be achieved. (Ga. L. 1956, p. 27, § 20; Code 1981, § 42-8-43, as redesignated by Ga. L. 2015, p. 422, § 4-1/HB 310.)

The 2015 amendment, effective July 1, 2015, redesignated former Code Section 42-8-44 as present Code Section 42-8-43. See editor's note for applicability.

Editor's notes. — Former Code Section 42-8-43 (Ga. L. 1956, p. 27, § 15; Ga. L. 1972, p. 604, § 11), relating to effect of article on existing county probation systems, was repealed by Ga. L. 2015, p. 422, § 4-1/HB 310, effective July 1, 2015.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

Cited in Sentinel Offender Svcs., LLC v. Glover, No. S14A1271, S14X1272, 2014 Ga. LEXIS 940 (Nov. 24, 2014).

42-8-43.1 through 42-8-43.3.

Repealed by Ga. L. 2015, p. 422, § 4-1/HB 310, effective July 1, 2015.

Editor's notes. — The sections were based on Code 1981, § 42-8-43.1, enacted by Ga. L. 1982, p. 1605, § 1; Ga. L. 1983, p. 421, § 1; Code 1981, § 42-8-43.2, enacted by Ga. L. 1987, p. 1319, § 1; Code 1981, § 42-8-43.3, enacted by Ga. L. 1988, p. 1951, § 1.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

ARTICLE 3

FIRST OFFENDERS

42-8-60. Probation prior to adjudication of guilt; violation of probation; review of criminal record by judge.

JUDICIAL DECISIONS

Analysis

Procedure

First-offender status is discretionary.

Trial court did not abuse the court's discretion by failing to sentence the defendant as a first offender because although the defendant did not request first offender treatment, it was apparent from the record that the trial court knew of the defendant's lack of criminal convictions but nevertheless sentenced the defendant to 30 years, to serve 10, and 20 years consecutive on probation. Freeman v. State, 328 Ga. App. 756, 760 S.E.2d 708 (2014).

Application to Specific Offenses

Questioning witness in drug case on treatment twice as first offender. — Because there was no evidence that the cellmate was ineligible for first-offender treatment under the probation for first offenders statute in 2009 based on the cellmate pleading guilty in 2004 to misdemeanor drug possession, and being sentenced as a first offender under the conditional discharge for possession of a controlled substance as a first offense statute, the cellmate's failure to inform the court in the 2009 case that the cellmate had formerly been given first offender treatment in the misdemeanor drug-possession case did not present a credibility issue, and trial counsel was not ineffective in failing to cross-examine the cellmate about being twice sentenced as a first offender to attack the cellmate's credibility. Brittain v. State, 329 Ga. App. 689, 766 S.E.2d 106 (2014).

42-8-61. Defendant to be informed of eligibility for sentencing as first offender.

When a defendant is represented by an attorney, his or her attorney shall be responsible for informing the defendant as to his or her eligibility for sentencing as a first offender. When a defendant is pro se,

the court shall inquire as to the defendant's interest in entering a plea pursuant to the terms of this article. If the defendant expresses a desire to be sentenced as a first offender, the court shall ask the prosecuting attorney or probation official if the defendant is eligible for sentencing as a first offender. When imposing a sentence, the court shall ensure that, if a defendant is sentenced as a first offender, he or she is made aware of the consequences of entering a first offender plea pursuant to the terms of this article. (Ga. L. 1968, p. 324, § 3; Ga. L. 1982, p. 1807, § 2; Ga. L. 2015, p. 422, § 5-74/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of this Code section for the former provisions, which read: "The defendant shall be informed of the terms of this article at the time of imposition of sentence." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-65. Use of prior finding of guilt in subsequent prosecutions; release of records of discharge; modification of records to reflect conviction; effect of confinement sentence where guilt not adjudicated.

Editor's notes. — Ga. L. 1985, p. 380, § 3, not codified by the General Assembly, provided as follows: "Subsection (d) [now subsection (c)] of Code Section 42-8-65 of the Official Code of Georgia Annotated enacted by Section 2 of this Act shall be repealed upon the ratification of an amendment to the Constitution extending the jurisdiction of the State Board of Pardons and Paroles to consider cases covered by Code Section 42-8-60." As of July 1, 2015, no vote had been taken on such a constitutional amendment.

42-8-66. Petition for discharge and exoneration; hearing; retroactive grant of first offender status.

(a) An individual who qualified for sentencing pursuant to this article but who was not informed of his or her eligibility for first offender treatment may, with the consent of the prosecuting attorney, petition the superior court in the county in which he or she was convicted for discharge and exoneration pursuant to this article.

(b) The court shall hold a hearing on the petition if requested by the petitioner or prosecuting attorney or desired by the court.

(c) In considering a petition pursuant to this Code section, the court may consider any:

(1) Evidence introduced by the petitioner;

(2) Evidence introduced by the prosecuting attorney; and

(3) Other relevant evidence.

(d) The court may issue an order retroactively granting first offender treatment and discharge the defendant pursuant to this article if the court finds by a preponderance of the evidence that the defendant was eligible for sentencing under the terms of this article at the time he or she was originally sentenced and the ends of justice and the welfare of society are served by granting such petition.

(e) The court shall send a copy of any order issued pursuant to this Code section to the petitioner, the prosecuting attorney, and the Georgia Bureau of Investigation. The Georgia Bureau of Investigation shall modify its records accordingly.

(f) This Code section shall not apply to a sentence that may be modified pursuant to subsection (f) of Code Section 17-10-1. (Code 1981, § 42-8-66, enacted by Ga. L. 1998, p. 180, § 3; Ga. L. 2015, p. 422, § 5-75/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of this Code section for the former provisions, which read: "The provisions of this article shall not apply to any person who is convicted of a serious violent felony as defined in subsection (a) of Code Section 17-10-6.1." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 5-73/HB310, not codified by the General Assembly, provides: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

ARTICLE 4

PARTICIPATION OF PROBATIONERS IN COMMUNITY SERVICE PROGRAMS

42-8-70 through 42-8-74.

Reserved. Repealed by Ga. L. 2015, p. 422, § 5-72, effective July 1, 2015.

Editor's notes. — This article was based on Ga. L. 1982, p. 1257, §§ 1-5; Code 1981, § 42-8-70 through 42-8-74, enacted by Ga. L. 1982, p. 1257, § 6; Ga. L. 1983, p. 1593, § 2; Ga. L. 1983, p. 3, § 31; Ga. L. 1983, p. 1593, §§ 1, 3; Ga. L. 1984, p. 367, § 1; Ga. L. 1989, p. 331, § 1; Ga. L. 1991, p. 1302, § 1; Ga. L. 1984, p. 592, § 1; Ga. L. 1995, p. 396, § 1; Ga. L. 2004, p. 775, § 6.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

ARTICLE 5

PRETRIAL RELEASE AND DIVERSION PROGRAMS

42-8-80 through 42-8-84.

Reserved. Repealed by Ga. L. 2015, p. 422, § 5-78/HB 310, effective July 1, 2015.

Editor's notes. — This article was based on Code 1981, § 42-8-80 through 42-8-83, enacted by Ga. L. 1984, p. 367, § 2; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 708, § 17; Ga. L. 1996, p. 748, § 23; Ga. L. 2000, p. 1643, § 3-4; Code 1981, § 42-8-84, enacted by Ga. L. 1985, p. 149, § 42.

Ga. L. 2015, p. 422, § 5-78/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

ARTICLE 6

COUNTY AND MUNICIPAL PROBATION

Editor's notes. — Ga. L. 2015, p. 422, § 3-1/HB 310, not codified by the General Assembly, provides that: "(a) The General Assembly finds that:

"(1) The authorization for county and municipal probation offices and private probation services was enacted to provide cost savings to the state by using state probation services for felony offenders and utilizing county and municipal probation offices and private probation entities which contract with courts for the supervision of misdemeanor and county and city ordinance offenders;

"(2) In enacting such legislation, the General Assembly intended to authorize judges to use county and municipal probation offices and private probation services providers to supervise misdemeanor and county and city ordinance offenders in the same manner as the judges of the superior courts use state probation services as a means of supervising felony offenders;

"(3) The General Assembly did not intend to restrict the powers of judges to impose, suspend, toll, revoke, or otherwise manage the probation of misdemeanor and county and city ordinance offenders sentenced in such courts when utilizing county and municipal probation offices and private probation services providers; and

"(4) The General Assembly intended that county and municipal probation officers and private probation officers, when acting in performance of their official duties in supervising probationers in accordance with law and the orders of a court, would have the same rights, authority, and protections as state probation supervisors.

"(b) It is the intention of the General Assembly to improve the use and provision of probation services by courts for misdemeanor and ordinance violations by enacting this part."

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

Electronic monitoring. — Trial court erred in holding that the imposition of electronic monitoring on misdemeanor defendants supervised by private probation servicing companies was prohibited. Sentinel Offender Svcs., LLC v. Glover, No.

S14A1271, S14X1272, 2014 Ga. LEXIS 940 (Nov. 24, 2014).

42-8-100. Definitions.

As used in this article, the term:

(1) "Board" means the Board of Community Supervision.

(2) "Private probation officer" means an individual employed by a private corporation, private enterprise, private agency, or other private entity to supervise defendants placed on probation by a court for committing an ordinance violation or misdemeanor.

(3) "Probation officer" means an individual employed by a governing authority of a county, municipality, or consolidated government to supervise defendants placed on probation by a court for committing an ordinance violation or misdemeanor. (Code 1981, § 42-8-100, enacted by Ga. L. 2015, p. 422, § 3-2/HB 310.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-101. Agreements for probation services; termination of contract for probation services.

(a)(1) The chief judge of any court within a county, with the approval of the governing authority of such county, shall be authorized to enter into written contracts with corporations, enterprises, or agencies to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation in such county. In no case shall a private probation corporation or enterprise be charged with the responsibility for supervising a felony sentence. The final contract negotiated by the chief judge with the private probation entity shall be attached to the approval by the governing authority of the county to privatize probation services as an exhibit thereto. The termination of a contract for probation services as provided for in this subsection shall be initiated by the chief judge of the court which entered into the contract, and subject to approval by the governing authority of the county which entered into the contract and in accordance with the agreed upon, written provisions of such contract.

(2) The chief judge of any court within a county, with the approval of the governing authority of such county, is authorized to establish a county probation system to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation in such county.

(b)(1) The judge of the municipal court of any municipality or consolidated government of a municipality and county of this state, with the approval of the governing authority of such municipality or consolidated government, is authorized to enter into written contracts with private corporations, enterprises, or agencies to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation. The final contract negotiated by the judge with the private probation entity shall be attached to the approval by the governing authority of the municipality or consolidated government to privatize probation services as an exhibit thereto. The termination of a contract for probation services as provided for in this subsection shall be initiated by the chief judge of the court which entered into the contract and shall be subject to approval by the governing authority of the municipality or consolidated government which entered into the contract and in accordance with the agreed upon, written provisions of such contract.

(2) The judge of the municipal court of any municipality or consolidated government of a municipality and county of this state, with the approval of the governing authority of such municipality or consolidated government, is authorized to establish a probation system to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation. (Code 1981, § 42-8-100, enacted by Ga. L. 1991, p. 1135, § 2; Ga. L. 1992, p. 3221, § 7; Ga. L. 1995, p. 396, § 2; Ga. L. 1996, p. 1107, § 2; Ga. L. 2000, p. 1554, § 2; Ga. L. 2001, p. 813, § 2; Ga. L. 2006, p. 727, § 2/SB 44; Code 1981, § 42-8-101, as redesignated by Ga. L. 2015, p. 422, § 3-2/HB 310.)

The 2015 amendment, effective July 1, 2015, redesignated former subsections (g) and (h) of Code Section 42-8-100 as present subsections (a) and (b) of Code Section 42-8-101; and rewrote the section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

JUDICIAL DECISIONS

Constitutionality. — In a suit brought by misdemeanor defendants challenging the privatization of probation services under O.C.G.A. § 42-8-100(g)(1), the Georgia Supreme Court agreed with the trial court that § 42-8-100(g)(1) was not unconstitutional on the statute's face and did not offend due process or equal protection nor condone imprisonment for debt. Sentinel Offender Svcs., LLC v. Glover, No. S14A1271, S14X1272, 2014 Ga. LEXIS 940 (Nov. 24, 2014).

Collection of electronic monitoring fees by private probation service. — Trial court erred by finding that electronic monitoring fees imposed by the sentencing court and collected by a private probation service for monitoring services rendered during a probationer's original term of sentence were prohibited because only when electronic monitoring was unlawfully imposed by the court on a misdemeanor probationer after the expiration of the probationers' original sentence would such fees potentially be recoverable. Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456 (2014).

Under current Georgia statutes, the tolling of a misdemeanor probationer's sentence is not permitted and courts utilizing probation systems established pursuant to O.C.G.A. § 42-8-100(g)(1) are specifically precluded from applying the provisions of the State-wide Probation Act, O.C.G.A. § 42-8-20 et seq., including those pertaining to tolling, to the defendants the courts sentence. Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456 (2014).

Validity of private probation services. — Under Georgia law, a private probation company can act as a probation provider and the company's employees may serve as probation officers only if the company complies with the terms and provisions of O.C.G.A. § 42-8-100(g)(1). Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456 (2014).

Class certification in suit challenging private probation services. — In a suit challenging private probation services, the trial court's orders conditionally certifying class actions on behalf of misdemeanor probationers were reversed and the cases remanded to the trial court for reconsideration of the class certification issues in light of the Georgia Supreme Court's opinion and its requirement that the trial court carefully consider issues of justiciability with respect to the scope of any class certified and the relief available to potential class members. Sentinel Offender Services, LLC v. Glover, 296 Ga. 315, 766 S.E.2d 456 (2014).

Tolling of probationer's sentence prohibited. — Georgia Supreme Court held that the private probation statutory framework did not allow for the tolling of misdemeanor probationers' sentences and to the extent Georgia courts have recognized O.C.G.A. § 42-8-36 as a basis for allowing courts utilizing probation systems established pursuant to O.C.G.A. § 42-8-100(g)(1) to toll a probationer's sentence, such analysis was in error and was disapproved. Sentinel Offender Svcs., LLC v. Glover, No. S14A1271, S14X1272, 2014 Ga. LEXIS 940 (Nov. 24, 2014).

42-8-102. Probation and supervision; determination of fees, fines, and restitution; converting moneys owed to community service; continuing jurisdiction; revocation; transfer.

(a) Any court which has original jurisdiction of ordinance violations or misdemeanors and in which the defendant in such a case has been found guilty upon verdict or has pled guilty or nolo contendere may, at a time to be determined by the court, hear and determine the question of the probation of such defendant.

(b) If it appears to the court upon a hearing of the matter that the defendant is not likely to engage in an unlawful course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court in its discretion may place the defendant on probation under the supervision and control of a probation officer or private probation officer for all or a portion of the sentence or may impose a sentence upon the defendant but stay and suspend the execution of such sentence or any portion thereof. The period of probation or suspension shall not exceed the maximum sentence of confinement which could be imposed on the defendant; provided, however, that nothing in this chapter shall be construed to limit the ability of a court to toll a sentence as provided in this article.

(c) The court may, in its discretion, require the payment of a fine, fees, or restitution as a condition of probation. The provisions of Chapter 14 of Title 17 shall control in determining the amount of restitution. When probation supervision is required, the court may require the payment of a probation supervision fee as a condition of probation. In determining the financial obligations, other than restitution, to impose on the defendant, the court may consider:

(1) The defendant's financial resources and other assets, including whether any such asset is jointly controlled;

(2) The defendant's earnings and other income;

(3) The defendant's financial obligations, including obligations to dependents;

(4) The period of time during which the probation order will be in effect;

(5) The goal of the punishment being imposed; and

(6) Any other factor the court deems appropriate.

(d) The court may convert fines, statutory surcharges, and probation supervision fees to community service on the same basis as it allows a

defendant to pay a fine through community service as set forth in subsection (d) of Code Section 17-10-1.

(e)(1) As used in this subsection, the term:

(A) "Developmental disability" shall have the same meaning as set forth in Code Section 37-1-1.

(B) "Indigent" means an individual who earns less than 100 percent of the federal poverty guidelines unless there is evidence that the individual has other resources that might reasonably be used without undue hardship for such individual or his or her dependents.

(C) "Significant financial hardship" means a reasonable probability that an individual will be unable to satisfy his or her financial obligations for two or more consecutive months.

(D) "Totally and permanently disabled" shall have the same meaning as set forth in Code Section 49-4-80.

(2) The court shall waive, modify, or convert fines, statutory surcharges, probation supervision fees, and any other moneys assessed by the court or a provider of probation services upon a determination by the court prior to or subsequent to sentencing that a defendant has a significant financial hardship or inability to pay or that there are any other extenuating factors which prohibit payment or collection; provided, however, that the imposition of sanctions for failure to pay such sums shall be within the discretion of the court through judicial process or hearings.

(3) Unless rebutted by a preponderance of the evidence that a defendant will be able to satisfy his or her financial obligations without undue hardship to the defendant or his or her dependents, a defendant shall be presumed to have a significant financial hardship if he or she:

(A) Has a developmental disability;

(B) Is totally and permanently disabled;

(C) Is indigent; or

(D) Has been released from confinement within the preceding 12 months and was incarcerated for more than 30 days before his or her release.

(f)(1) The sentencing judge shall not lose jurisdiction over any person placed on probation during the term of his or her probated sentence. As further set forth in this subsection, the judge may revoke any or all of the probated sentence, rescind any or all of the sentence, or, in any manner deemed advisable by the judge, modify or change

the probated sentence, including tolling the sentence as provided in this article, at any time during the period of time originally prescribed for the probated sentence to run.

(2) Absent a waiver, the court shall not revoke a probationary sentence for failure to pay fines, statutory surcharges, or probation supervision fees without holding a hearing, inquiring into the reasons for the probationer's failure to pay, and, if a probationary sentence is revoked, making an express written determination that the probationer has not made sufficient bona fide efforts to pay and the probationer's failure to pay was willful or that adequate alternative types of punishment do not exist. Should the probationer fail to appear at such hearing, the court may, in its discretion, revoke the probated sentence.

(3) A person otherwise found eligible to have his or her probation modified or terminated pursuant to paragraph (1) of this subsection shall not be deemed ineligible for modification or termination of probation solely due to his or her failure to pay fines, statutory surcharges, or probation supervision fees.

(4) At any revocation hearing, upon proof that the probationer has violated probation:

(A) For failure to report to probation or failure to pay fines, statutory surcharges, or probation supervision fees, the court shall consider the use of alternatives to confinement, including community service, modification of the terms of probation, or any other alternative deemed appropriate by the court. The court shall consider whether a failure to pay court imposed financial obligations was willful. In the event an alternative is not warranted, the court shall revoke the balance of probation or a period not to exceed 120 days in confinement, whichever is less; and

(B) For failure to comply with any other general provision of probation or suspension, the court shall consider the use of alternatives to confinement, including community service or any other alternative deemed appropriate by the court. In the event an alternative is not warranted, the court shall revoke the balance of probation or a period not to exceed two years in confinement, whichever is less.

(g) If a defendant is placed on probation pursuant to this Code section by a court other than one for the county or municipality in which he or she resides for committing any ordinance violation or misdemeanor, such defendant may, when specifically ordered by the court, have his or her probation supervision transferred to the county or municipality in which he or she resides. (Code 1981, § 42-8-102, enacted by Ga. L. 2015, p. 422, § 3-2/HB 310.)

Effective date. — This Code section became effective July 1, 2015.

Editor's notes. — Ga. L. 2015, p. 422, § 3-2/HB 310, effective July 1, 2015, redesignated former Code Section 42-8-102 as present Code Section 42-8-107.

42-8-103. Pay-only probation.

(a) As used in this Code section, the term "pay-only probation" means a defendant has been placed under probation supervision solely because such defendant is unable to pay the court imposed fines and statutory surcharges when such defendant's sentence is imposed. Such term shall not include circumstances when restitution has been imposed or other probation services are deemed appropriate by the court.

(b) When pay-only probation is imposed, the probation supervision fees shall be capped so as not to exceed three months of ordinary probation supervision fees notwithstanding the number of cases for which a fine and statutory surcharge were imposed or that the defendant was sentenced to serve consecutive sentences; provided, however, that collection of any probation supervision fee shall terminate as soon as all court imposed fines and statutory surcharges are paid in full.

(c) If pay-only probation is subsequently converted to a sentence that requires community service, on petition by a probation officer or private probation officer and with the probationer having an opportunity for a hearing, the court may reinstate probation supervision fees as necessary to monitor the probationer's compliance with community service obligations. (Code 1981, § 42-8-103, enacted by Ga. L. 2015, p. 422, § 3-2/HB 310.)

Effective date. — This Code section became effective July 1, 2015.

Editor's notes. — Ga. L. 2015, p. 422, § 3-2/HB 310, effective July 1, 2015, redesignated former Code Section 42-8-103 as present Code Section 42-8-108.

42-8-104. Terms and conditions of probation.

(a) A court which utilizes the services of a probation officer or private probation officer shall determine the terms and conditions of probation under this article and may provide such terms and conditions of probation as the court deems appropriate, including, but not limited to, providing that the probationer shall:

(1) Avoid injurious and vicious habits;

(2) Avoid persons or places of disreputable or harmful character;

(3) Report to the probation officer or private probation officer, as the case may be, as directed;

(4) Permit the probation officer or private probation officer, as the case may be, to visit the probationer at the probationer's home or elsewhere;

(5) Work faithfully at suitable employment insofar as may be possible;

(6) Remain within a specified location; provided, however, that the court shall not banish a probationer to any area within this state:

(A) That does not consist of at least one entire judicial circuit as described by Code Section 15-6-1; or

(B) In which any service or program in which the probationer must participate as a condition of probation is not available;

(7) Make reparation or restitution to any aggrieved person for the damage or loss caused by the probationer's offense, in an amount to be determined by the court in accordance with the provisions of Article 1 of Chapter 14 of Title 17. Unless otherwise provided by law, no reparation or restitution to any aggrieved person for the damage or loss caused by the probationer's offense shall be made if the amount is in dispute unless the same has been determined as provided in Article 1 of Chapter 14 of Title 17;

(8) Make reparation or restitution as reimbursement to a municipality or county for the payment for medical care furnished to the person while incarcerated pursuant to the provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local governmental unit for the provision of medical care shall be made if the amount is in dispute unless the same has been determined as provided in Article 1 of Chapter 14 of Title 17;

(9) Repay the costs incurred by any municipality or county for wrongful actions by an inmate covered under the provisions of paragraph (1) of subsection (a) of Code Section 42-4-71;

(10) Support the probationer's legal dependents to the best of the probationer's ability;

(11) Violate no local, state, or federal laws and be of general good behavior;

(12) If permitted to move or travel to another state, agree to waive extradition from any jurisdiction where the probationer may be found and not contest any effort by any jurisdiction to return the probationer to this state;

(13) Submit to evaluations and testing relating to rehabilitation and participate in and successfully complete rehabilitative programming as directed by the court, including periodic screening for drugs

and alcohol as ordered by the court and mental health evaluations as ordered by the court. The court may assess and the probation officer or private probation officer, as the case may be, shall be authorized to collect the costs or a portion of the costs, as determined by the court, of such evaluations, testing, rehabilitation programs, and screenings from the probationer;

(14) Wear a device capable of tracking the location of the probationer by means including electronic surveillance or global positioning satellite systems. The court may assess and the probation officer or private probation officer, as the case may be, shall collect fees from the probationer for such monitoring at a rate not to exceed the rate set forth in the contract between the court and the provider of services;

(15) Wear a device capable of detecting drug or alcohol use by the probationer. The court may assess and the probation officer or private probation officer, as the case may be, shall collect fees from the probationer for such monitoring at a rate not to exceed the rate set forth in the contract between the court and the provider of services; and

(16) Complete a residential or nonresidential program for substance abuse or mental health treatment as indicated by a risk and needs assessment for which the court may assess, and the probation officer or private probation officer, as the case may be, shall be authorized to collect the costs of or a portion of the costs, as determined by the court, of such program from the probationer.

(b) Nothing in this Code section shall be construed as prohibiting a court in appropriate circumstances from imposing additional special conditions of probation unless otherwise prohibited by law. (Code 1981, § 42-8-104, enacted by Ga. L. 2015, p. 422, § 3-2/HB 310.)

Effective date. — This Code section became effective July 1, 2015.

Editor's notes. — Ga. L. 2015, p. 422, § 3-2/HB 310, effective July 1, 2015, redesignated former Code Section 42-8-104 as present Code Section 42-8-109.

42-8-105. Probationer obligation to keep officer informed of certain information; tolling for failure to meet certain obligations; procedure.

(a) It shall be the duty of a probationer, as a condition of probation, to keep his or her probation officer or private probation officer, as the case may be, informed as to his or her contact information, including residence and mailing address, telephone number, and e-mail address. The court may also require, as a condition of probation and under such terms as the court deems advisable, that the probationer keep his or her

probation officer or private probation officer, as the case may be, informed as to his or her whereabouts.

(b)(1) The running of a probated sentence may be tolled upon the failure of a probationer to appear in court for a probation revocation hearing or to report as directed to his or her probation officer or private probation officer, as the case may be; either of such failures shall be evidenced by an affidavit from the probation officer or private probation officer, as the case may be, setting forth such failure and stating efforts made by such officer to contact the probationer. When the allegation is for failure to report, such affidavit shall include, at a minimum, an averment by the probation officer or private probation officer that:

(A) The probationer has failed to report to his or her probation officer or private probation officer, as the case may be, on at least two occasions;

(B) The officer has attempted to contact the probationer at least two times by telephone or e-mail at the probationer's last known telephone number or e-mail address, which information shall be listed in the affidavit;

(C) The officer has checked the local jail rosters and determined that the probationer is not incarcerated;

(D) The officer has sent a letter by first-class mail to the probationer's last known address, which shall be listed in the affidavit, advising the probationer that the officer will seek a tolling order if the probationer does not report to such officer, either by telephone or in person, within ten days of the date on which the letter was mailed; and

(E) The probationer has failed to report to the probation officer or private probation officer, as the case may be, as directed in the letter set forth in subparagraph (D) of this paragraph and ten days have passed since the date on which the letter was mailed.

(2) In the event the probationer reports to his or her probation officer or private probation officer, as the case may be, within the period prescribed in subparagraph (D) of paragraph (1) of this subsection, the probationer shall be scheduled to appear on the next available court calendar for a hearing to consider whether the probation sentence should be tolled.

(c) Upon receipt of the affidavit required by subsection (b) of this Code section, the court may, in its discretion, toll the probated sentence.

(d) The effective date of the tolling of the sentence shall be the date the court enters a tolling order and shall continue until the probationer

personally reports to the probation officer or private probation officer, as the case may be, is taken into custody in this state, or is otherwise available to the court, whichever event first occurs.

(e) Any tolled period of time shall not be included in computing creditable time served on probation or as any part of the time that the probationer was sentenced to serve.

(f) Any unpaid fines, restitution, or other moneys owed as a condition of probation shall be due when the probationer is arrested; provided, however, that if the entire balance of his or her probation is revoked, all the conditions of probation, including moneys owed, shall be negated by his or her imprisonment. If only part of the balance of the probation is revoked, the court shall determine the probationer's responsibility for the amount of the unpaid fines, restitution, and other moneys owed that shall be imposed upon his or her return to probation after release from imprisonment and may reduce arrearages under the same circumstances and conditions as set forth in subsection (f) of Code Section 42-8-102. (Code 1981, § 42-8-105, enacted by Ga. L. 2015, p. 422, § 3-2/HB 310.)

Effective date. — This Code section became effective July 1, 2015.

Editor's notes. — Ga. L. 2015, p. 422, § 3-2/HB 310, effective July 1, 2015, redesignated former Code Section 42-8-105 as present Code Section 42-8-109.1.

42-8-106. Advisory council created; membership; powers and duties of Board of Community Supervision.

(a) There is created an advisory council with respect to the provisions of this article composed of one superior court judge designated by The Council of Superior Court Judges of Georgia, one state court judge designated by The Council of State Court Judges of Georgia, one municipal court judge designated by the Council of Municipal Court Judges of Georgia, one probate court judge designated by The Council of Probate Court Judges of Georgia, one magistrate designated by the Council of Magistrate Court Judges, one attorney who specializes in criminal defense appointed by the Governor, one probation officer appointed by the Governor, and one private probation officer or individual with expertise in private probation services by virtue of his or her training or employment appointed by the Governor. The appointing authority shall determine the length of its appointee's term serving on such council. The advisory council shall elect a chairperson from among its membership and such other officers as it deems necessary.

(b) The board shall have the following powers and duties; provided that, with respect to promulgating the rules, regulations, and standards set forth in this subsection, the board shall act only upon consultation with and approval by the advisory board:

(1) To review the uniform professional standards for private probation officers and uniform contract standards for private probation contracts established in Code Section 42-8-107 and submit a report with its recommendations to the General Assembly;

(2) To promulgate rules and regulations to implement those uniform professional standards for probation officers and uniform agreement standards for the establishment of probation services by a county, municipality, or consolidated government established in Code Section 42-8-107;

(3) To promulgate rules and regulations establishing a 40 hour initial orientation for newly hired private probation officers and for 20 hours per annum of continuing education for private probation officers, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a basic course of training for supervision of probationers or parolees certified by the Georgia Peace Officer Standards and Training Council or any private probation officer who has been employed by a private probation corporation, enterprise, or agency for at least six months as of July 1, 1996;

(4) To promulgate rules and regulations establishing a 40 hour initial orientation for probation officers and for 20 hours per annum of continuing education for such probation officers, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a basic course of training for supervision of probationers or parolees certified by the Georgia Peace Officer Standards and Training Council or any probation officer who has been employed by a county, municipality, or consolidated government as of March 1, 2006;

(5) To promulgate rules and regulations relative to compliance with the provisions of this article, and enforcement mechanisms that may include, but are not limited to, the imposition of sanctions and fines and the voiding of contracts or agreements;

(6) To promulgate rules and regulations establishing registration for any private corporation, private enterprise, private agency, county, municipality, or consolidated government providing probation services under the provisions of this article, subject to the provisions of Code Section 42-8-109.3;

(7) To produce an annual summary report;

(8) To promulgate rules and regulations requiring criminal record checks of individuals seeking to become private probation officers and establishing procedures for such criminal record checks. The Department of Community Supervision on behalf of the board shall conduct

a criminal records check for individuals seeking to become probation officers as provided in Code Section 35-3-34. The board shall promulgate rules and regulations relating to restrictions regarding misdemeanor convictions. An agency or private entity shall also be authorized to conduct a criminal history background check of a person employed as a probation officer or private probation officer or individuals seeking such positions. The criminal history check may be conducted in accordance with Code Section 35-3-34 and may be based upon the submission of fingerprints of the individual whose records are requested. The Georgia Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records. The federal record, if any, shall be obtained and returned to the requesting entity or agency;

(9) To create committees from among the membership of the board as well as appoint other persons to serve in an advisory capacity to the board in implementing this article; and

(10) To promulgate rules and regulations requiring probation officers and private probation officers to be registered with the board, pay a fee for such registration, and provide for the imposition of sanctions and fines on such officers for misconduct. (Code 1981, § 42-8-101, enacted by Ga. L. 1991, p. 1135, § 2; Ga. L. 1992, p. 3221, § 8; Ga. L. 1995, p. 396, § 2; Ga. L. 1996, p. 1107, §§ 3, 4; Ga. L. 1997, p. 692, § 1; Ga. L. 2006, p. 727, § 2/SB 44; Code 1981, § 42-8-106, as redesignated by Ga. L. 2015, p. 422, § 3-2/HB 310.)

The 2015 amendment, effective July 1, 2015, redesignated former Code Section 42-8-101 as present Code Section 42-8-106; and rewrote this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-107. Uniform professional standards and uniform contract standards.

(a) The uniform professional standards contained in this subsection shall be met by any person employed as and using the title of a private probation officer or probation officer. Any such person shall be at least 21 years of age at the time of appointment to the position of private probation officer or probation officer and shall have completed a standard two-year college course or have four years of law enforcement experience; provided, however, that any person employed as a private probation officer as of July 1, 1996, and who had at least six months of experience as a private probation officer or any person employed as a probation officer by a county, municipality, or consolidated government as of March 1, 2006, shall be exempt from such college requirements.

Every private probation officer shall receive an initial 40 hours of orientation upon employment and shall receive 20 hours of continuing education per annum as approved by the board, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a basic course of training for supervision of probationers or parolees certified by the Peace Officer Standards and Training Council or any private probation officer who has been employed by a private probation corporation, enterprise, or agency for at least six months as of July 1, 1996, or any person employed as a probation officer by a county, municipality, or consolidated government as of March 1, 2006. In no event shall any person convicted of a felony be employed as a probation officer or private probation officer.

(b) The uniform contract standards contained in this subsection shall apply to all private probation contracts executed under the authority of Code Section 42-8-101. The terms of any such contract shall state, at a minimum:

(1) The extent of the services to be rendered by the private corporation or enterprise providing probation supervision;

(2) Any requirements for staff qualifications, including those contained in this Code section as well as any surpassing those contained in this Code section;

(3) Requirements for criminal record checks of staff in accordance with the rules and regulations established by the board;

(4) Policies and procedures for the training of staff that comply with rules and regulations promulgated by the board;

(5) Bonding of staff and liability insurance coverage;

(6) Staffing levels and standards for offender supervision, including frequency and type of contacts with offenders;

(7) Procedures for handling the collection of all court ordered fines, fees, and restitution;

(8) Procedures for handling indigent offenders to ensure placement of such indigent offenders irrespective of the ability to pay;

(9) Circumstances under which revocation of an offender's probation may be recommended;

(10) Reporting and record-keeping requirements; and

(11) Default and contract termination procedures.

(c) The uniform contract standards contained in this subsection shall apply to all counties, municipalities, and consolidated governments that enter into agreements with a judge to provide probation services

under the authority of Code Section 42-8-101. The terms of any such agreement shall state at a minimum:

(1) The extent of the services to be rendered by the local governing authority providing probation services;

(2) Any requirements for staff qualifications, including those contained in this Code section;

(3) Requirements for criminal record checks of staff in compliance with the rules and regulations established by the board;

(4) Policies and procedures for the training of staff that comply with the rules and regulations established by the board;

(5) Staffing levels and standards for offender supervision, including frequency and type of contacts with offenders;

(6) Procedures for handling the collection of all court ordered fines, fees, and restitution;

(7) Circumstances under which revocation of an offender's probation may be recommended;

(8) Reporting and record-keeping requirements; and

(9) Default and agreement termination procedures.

(d) The board shall review the uniform professional standards and uniform contract and agreement standards contained in this Code section and shall submit a report on its findings to the General Assembly. The board shall submit its initial report on or before January 1, 2017, and shall continue such reviews every two years thereafter. Nothing contained in such report shall be considered to authorize or require a change in such standards without action by the General Assembly having the force and effect of law. Such report shall provide information which will allow the General Assembly to review the effectiveness of the minimum professional standards and, if necessary, to revise such standards. This subsection shall not be interpreted to prevent the board from making recommendations to the General Assembly prior to its required review and report. (Code 1981, § 42-8-102, enacted by Ga. L. 1992, p. 1465, § 1; Ga. L. 1995, p. 396, § 2; Ga. L. 1996, p. 1107, § 5; Ga. L. 2006, p. 727, § 2/SB 44; Code 1981, § 42-8-107, as redesignated by Ga. L. 2015, p. 422, § 3-2/HB 310.)

The 2015 amendment, effective July 1, 2015, redesignated former Code Section 42-8-102 as present Code Section 42-8-107; substituted "board" for "council" throughout, in subsection (a), substituted "shall" for "must" in the second sentence, substituted "basic course of training for supervision of probationers or parolees" for "basic course of training for supervision of probationers or parolees" in the third sentence, and, substituted "private" for "utilize the title of" in the last sentence; in subsections (b) and (c), substituted "Code Section 42-8-101" for "Code

Section 42-8-100"; in paragraphs (b)(2) and (c)(2), substituted "including" for "to include"; in subsection (d), deleted "subsections (a), (b), and (c) of" preceding "this Code section" in the first sentence, substituted "January 1, 2017" for "January 1, 2007" in the second sentence, substituted "such" for "the" in the third sentence, substituted "Such" for "This" at the beginning of the fourth sentence, and substituted "such" for "these" near the end.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-108. Quarterly report to judge and council; records to be open for inspection.

(a) Any private corporation, private enterprise, or private agency contracting to provide probation services or any county, municipality or consolidated government entering into an agreement under the provisions of this article shall provide to the judge with whom the contract or agreement was made and the board a quarterly report summarizing the number of offenders under supervision; the amount of fines, statutory surcharges, and restitution collected; the amount of fees collected and the nature of such fees, including probation supervision fees, rehabilitation programming fees, electronic monitoring fees, drug or alcohol detection device fees, substance abuse or mental health evaluation or treatment fees, and drug testing fees; the number of community service hours performed by probationers under supervision; a listing of any other service for which a probationer was required to pay to attend; the number of offenders for whom supervision or rehabilitation has been terminated and the reason for the termination; and the number of warrants issued during the quarter, in such detail as the board may require. Information reported pursuant to this subsection shall be annually submitted to the governing authority that entered into such contract and thereafter be subject to disclosure pursuant to Article 4 of Chapter 18 of Title 50. Local governments are encouraged to post electronic copies of the annual report on the local government's website, if such website exists.

(b) All records of any private corporation, private enterprise, or private agency contracting to provide services or of any county, municipality, or consolidated government entering into an agreement under the provisions of this article shall be open to inspection upon the request of the affected county, municipality, consolidated government, court, the Department of Audits and Accounts, an auditor appointed by the affected county, municipality, or consolidated government, Department of Corrections, Department of Community Supervision, State Board of Pardons and Paroles, or the board. (Code 1981, § 42-8-103, enacted by Ga. L. 1995, p. 396, § 2; Ga. L. 1997, p. 692, § 2; Ga. L. 2006, p. 727, § 2/SB 44; Code 1981, § 42-8-108, as redesignated by Ga. L. 2015, p. 422, § 3-2/HB 310.)

The 2015 amendment, effective July 1, 2015, redesignated former Code Section 42-8-103 as present Code Section 42-8-108; in subsection (a), substituted "board" for "council" and inserted "the amount of fees collected and the nature of such fees, including probation supervision fees, rehabilitation programming fees, electronic monitoring fees, drug or alcohol detection device fees, substance abuse or mental health evaluation or treatment fees, and drug testing fees; the number of community service hours performed by probationers under supervision; a listing of any other service for which a probationer was required to pay to attend;" in the first sentence and added the second sentence; in subsection (b), substituted "an auditor appointed by the affected county, municipality, or consolidated government, Department of Corrections, Department of Community Supervision, State Board of Pardons and Paroles, or the board" for "or the council or its designee" at the end. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-109. Conflicts of interests prohibited — Private entities.

(a) No private corporation, private enterprise, or private agency contracting to provide probation services under the provisions of this article nor any employees of such entities shall engage in any other employment, business, or activity which interferes or conflicts with the duties and responsibilities under contracts authorized in this article.

(b) No private corporation, private enterprise, or private agency contracting to provide probation services under the provisions of this article nor its employees shall have personal or business dealings, including the lending of money, with probationers under their supervision.

(c)(1) No private corporation, private enterprise, or private agency contracting to provide probation services under the provisions of this article nor any employees of such entities, shall own, operate, have any financial interest in, be an instructor at, or be employed by any private entity which provides drug or alcohol education services or offers a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services.

(2) No private corporation, private enterprise, or private agency contracting to provide probation services under the provisions of this article nor any employees of such entities shall specify, directly or indirectly, a particular DUI Alcohol or Drug Use Risk Reduction Program which a probationer may or shall attend. This paragraph shall not prohibit furnishing any probationer, upon request, with the names of certified DUI Alcohol or Drug Use Risk Reduction Programs. Any person violating this paragraph shall be guilty of a misdemeanor. (Code 1981, § 42-8-104, enacted by Ga. L. 1995, p. 396, § 2; Ga. L. 1996, p. 1107, § 6; Ga. L. 2005, p. 334, § 24-2/HB 501; Ga. L. 2006, p. 727, § 2/SB 44; Code 1981, § 42-8-109, as redesignated by Ga. L. 2015, p. 422, § 3-2/HB 310.)

Editor's notes. — Ga. L. 2015, p. 422, § 3-2/HB 310, effective July 1, 2015, redesignated former Code Section 42-8-104 as present Code Section 42-8-109.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-109.1. Conflicts of interests prohibited — Public entities and employees.

(a) No county, municipality, or consolidated government probation office employee shall engage in any other employment, business, or activity which interferes or conflicts with the employee's duties and responsibilities under agreements authorized in this article.

(b) No county, municipality, or consolidated government probation office employee shall have personal or business dealings, including the lending of money, with probationers under the supervision of such probation office.

(c)(1) No county, municipality, or consolidated government probation office employee shall own, operate, have any financial interest in, be an instructor at, or be employed by any private entity which provides drug or alcohol education services or offers a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services.

(2) No county, municipality, or consolidated government that provides probation services through agreement under the provisions of this article nor any employees of such shall specify, directly or indirectly, a particular DUI Alcohol or Drug Use Risk Reduction Program which a probationer may or shall attend. This paragraph shall not prohibit furnishing any probationer, upon request, with the names of certified DUI Alcohol or Drug Use Risk Reduction Programs. Any person violating this paragraph shall be guilty of a misdemeanor. (Code 1981, § 42-8-105, enacted by Ga. L. 1995, p. 396, § 2; Ga. L. 2006, p. 727, § 2/SB 44; Code 1981, § 42-8-109.1, as redesignated by Ga. L. 2015, p. 422, § 3-2/HB 310.)

The 2015 amendment, effective July 1, 2015, redesignated former Code Section 42-8-105 as present Code Section 42-8-109.1; deleted "probation officer or other" throughout; and, in subsection (a), deleted "officer's or" preceding "employee's duties". See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-109.2. Confidentiality of records.

(a) Except as provided in subsection (a) of Code Section 42-8-108 and subsection (b) of this Code section, all reports, files, records, and papers

of whatever kind relative to the supervision of probationers by a private corporation, private enterprise, or private agency contracting under the provisions of this article or by a county, municipality, or consolidated government providing probation services under this article are declared to be confidential and shall be available only to the affected county, municipality, or consolidated government, or an auditor appointed by such county, municipality, or consolidated government, the judge handling a particular case, the Department of Audits and Accounts, Department of Corrections, Department of Community Supervision, State Board of Pardons and Paroles, or the board.

(b)(1) Any probationer under supervision under this article shall:

(A) Be provided with a written receipt and a balance statement each time he or she makes a payment;

(B) Be permitted, upon written request, to have a copy of correspondence, payment records, and reporting history from his or her probation file, one time, and thereafter, he or she shall be required to pay a fee as set by the board; provided, however, that the board shall promulgate rules and regulations clarifying what confidential information may be withheld from such disclosure; and

(C) Be permitted, upon written request to the board, to have a copy of the supervision case notes from his or her probation file when the commissioner of community supervision authorizes the release of such information in a written order; provided, however, that the board shall promulgate rules and regulations clarifying what confidential information may be withheld from such disclosure.

(2) When a probationer claims that information is being improperly withheld from his or her file, the probationer may file a motion with the sentencing court seeking an in camera inspection of such file. The probationer shall serve such motion on the prosecuting attorney and probation officer or private probation officer as appropriate.

(3) The following shall be subject to disclosure pursuant to Article 4 of Chapter 18 of Title 50:

(A) The board's rules and regulations regarding contracts or agreements for the provision of probation services;

(B) The board's rules and regulations regarding the conduct of business by private entities providing probation services as authorized by this article;

(C) The board's rules and regulations regarding county, municipal, or consolidated governments establishing probation systems as authorized by this article; and

(D) The rules, regulations, operating procedures, and guidelines of any private corporation, private enterprise, or private agency providing probation services under the provisions of this article.

(c) In the event of a transfer of the supervision of a probationer from a private corporation, private enterprise, or private agency or county, municipality, or consolidated government providing probation services under this article to the Department of Community Supervision, the Department of Community Supervision shall have access to any relevant reports, files, records, and papers of the transferring entity. (Code 1981, § 42-8-106, enacted by Ga. L. 1995, p. 396, § 2; Ga. L. 1997, p. 692, § 3; Ga. L. 2006, p. 727, § 2/SB 44; Code 1981, § 42-8-109.2, as redesignated by Ga. L. 2015, p. 422, § 3-2/HB 310.)

The 2015 amendment, effective July 1, 2015, redesignated Code Section 42-8-106 as Code Section 42-8-109.2; and rewrote this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

In light of the enactment of this Code section, the reader is advised to consult the annotation following Code Section 42-8-106 in the bound volume.

42-8-109.3. Registration with board.

(a)(1) All private corporations, private enterprises, and private agencies contracting or offering to contract for probation services shall register with the board before entering into any contract to provide services. Any private corporation, private enterprise, or private agency registered with the County and Municipal Probation Advisory Council on or before June 30, 2015, shall be deemed registered with the board; provided, however, that the board shall be authorized to review such contract and shall be responsible for subsequent renewals or changes to such contract. The information included in such registration shall include the name of the corporation, enterprise, or agency, its principal business address and telephone number, the name of its agent for communication, and other information in such detail as the board may require. No registration fee shall be required.

(2) Any private corporation, private enterprise, or private agency required to register under the provisions of paragraph (1) of this subsection which fails or refuses to do so shall be subject to revocation of any existing contracts, in addition to any other fines or sanctions imposed by the board.

(b)(1) All counties, municipalities, and consolidated governments agreeing or offering to agree to establish a probation system shall register with the board before entering into an agreement with the court to provide services. Any county, municipality, or consolidated

government that has a probation system registered with the County and Municipal Probation Advisory Council on or before June 30, 2015, shall be deemed registered with the board; provided, however, that the board shall be authorized to review such systems and shall be responsible for subsequent renewals or changes to such systems. The information included in such registration shall include the name of the county, municipality, or consolidated government, the principal business address and telephone number, a contact name for communication with the board, and other information in such detail as the board may require. No registration fee shall be required.

(2) Any county, municipality, or consolidated government required to register under the provisions of paragraph (1) of this subsection which fails or refuses to do so shall be subject to revocation of existing agreements, in addition to any other sanctions imposed by the board. (Code 1981, § 42-8-107, enacted by Ga. L. 1995, p. 396, § 2; Ga. L. 1997, p. 692, § 4; Ga. L. 2006, p. 727, § 2/SB 44; Ga. L. 2007, p. 363, § 1/HB 527; Code 1981, § 42-8-109.3, as redesignated by Ga. L. 2015, p. 422, § 3-2/HB 310.)

The 2015 amendment, effective July 1, 2015, redesignated former Code Section 42-8-107 as present Code Section 42-8-109.3; substituted "board" for "council" throughout; added the second sentence to paragraph (a)(1); and added the second sentence to paragraph (b)(1). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

In light of the enactment of this Code section, the reader is advised to consult the annotations following Code Section 42-8-107 in the bound volume.

42-8-109.4. Applicability of article to contractors for probation services; requirements for private corporations, private enterprises and private agencies entering into written contracts for services.

(a) The probation providers standards contained in this Code section shall be met by private corporations, private enterprises, or private agencies that enter into written contracts for probation services under the authority of Code Section 42-8-101. Any private corporation, private enterprise, or private agency which fails to meet the standards established in this subsection shall not be eligible to provide probation services in this state. All private corporations, private enterprises, or private agencies that enter into written contracts for probation services under the authority of Code Section 42-8-101 shall:

(1) Register with the board;

(2) Meet all requirements as outlined in subsection (b) of Code Section 42-8-107;

(3) Not own or control any finance business or lending institution which makes loans to probationers under its supervision; and

(4) Employ at least one person who is responsible for the direct supervision of private probation officers employed by the corporation, enterprise, or agency and who shall have at least five years' experience in corrections, parole, or probation services.

(b) The standards contained in this subsection shall be met by all counties, municipalities, or consolidated governments entering into written agreements to provide probation services to any court under the authority of Code Section 42-8-101. Any county, municipality, or consolidated government which fails to meet the standards established in this subsection shall not be eligible to provide probation services. All counties, municipalities, or consolidated governments which enter into written agreements to provide probation services under the authority of Code Section 42-8-101 shall:

(1) Register with the board;

(2) Meet the requirements of subsection (c) of Code Section 42-8-107; and

(3) Employ at least one person who is responsible for the direct supervision of probation officers and who shall have at least five years' experience in corrections, parole, or probation services. (Code 1981, § 42-8-109.4, enacted by Ga. L. 2015, p. 422, § 3-2/HB 310.)

The 2015 amendment, effective July 1, 2015, redesignated former Code Section 42-8-108 as present Code Section 42-8-109.4; and rewrote this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

In light of the enactment of this Code section, the reader is advised to consult the annotations following Code Section 42-8-108 in the bound volume.

42-8-109.5. Determination by court whether misdemeanor probation to be supervised by community supervision officer, private probation officer, or probation officer.

Whenever a probationer is under supervision by a community supervision officer, as such term is defined in Code Section 42-3-1, and sentenced to misdemeanor probation, the court shall determine whether the continuing supervision shall be performed by a community supervision officer, private probation officer, or probation officer. (Code 1981, § 42-8-109.5, enacted by Ga. L. 2015, p. 422, § 3-2/HB 310.)

Effective date. — This Code section became effective July 1, 2015.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General

Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

ARTICLE 7

IGNITION INTERLOCK DEVICES AS PROBATION CONDITION

42-8-112. Timing for issuance of ignition interlock device limited driving permit; documentation required; reporting requirement.

(a)(1) In any case where the court grants a certificate of eligibility for an ignition interlock device limited driving permit or probationary license pursuant to Code Section 42-8-111 to a person whose driver's license is suspended pursuant to subparagraph (c)(2)(C) of Code Section 40-5-57.1 or paragraph (2) of subsection (a) of Code Section 40-5-63, the Department of Driver Services shall not issue an ignition interlock device limited driving permit until after the expiration of 120 days from the date of the conviction for which such certificate was granted.

(2) The Department of Driver Services shall condition issuance of an ignition interlock device limited driving permit for such person upon receipt of acceptable documentation of the following:

(A) That the person to whom such permit is to be issued has completed a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services;

(B) That such person has completed a clinical evaluation as defined in Code Section 40-5-1 and enrolled in a substance abuse treatment program approved by the Department of Human Services or is enrolled in a drug court program;

(C) That such person has installed an ignition interlock device in any vehicle that he or she will be operating; and

(D) A certificate of eligibility for an ignition interlock device limited driving permit or probationary license from the court that sentenced such person for the conviction that resulted in the suspension or revocation of his or her driver's license for which he or she is applying for a limited driving permit or probationary license.

(b)(1) In any case where the court grants a certificate of eligibility for an ignition interlock device limited driving permit or probationary license pursuant to Code Section 42-8-111 to a person whose driver's license is revoked as a habitual violator pursuant to Code Section 40-5-58, the Department of Driver Services shall not issue a habitual

violator probationary license until after the expiration of two years from the date of the conviction for which such certificate was granted.

(2) The Department of Driver Services shall condition issuance of a habitual violator probationary license for such person upon receipt of acceptable documentation of the following:

(A) That the person to whom such probationary license is to be issued has completed a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services;

(B) That such person has completed a clinical evaluation as defined in Code Section 40-5-1 and enrolled in a substance abuse treatment program approved by the Department of Human Services or is enrolled in a drug court program;

(C) That such person has installed an ignition interlock device in any vehicle that he or she will be operating; and

(D) A certificate of eligibility for an ignition interlock device limited driving permit or probationary license from the court that sentenced such person for the conviction that resulted in the suspension or revocation of his or her driver's license for which he or she is applying for a limited driving permit or probationary license.

(3) In any case where installation of an ignition interlock device is required, failure to show proof of such device shall be grounds for refusal of reinstatement of such license or issuance of such habitual violator's probationary license or the immediate suspension or revocation of such license.

(4) Any limited driving permit or probationary license issued to such person shall bear a restriction reflecting that the person may only operate a motor vehicle equipped with a functional ignition interlock device. No person whose limited driving permit or probationary license contains such restriction shall operate a motor vehicle that is not equipped with a functional ignition interlock device.

(5)(A) Any person who has been issued an ignition interlock device limited driving permit or a habitual violator probationary license bearing an ignition interlock device condition shall maintain such ignition interlock device in any motor vehicle he or she operates to the extent required by the certificate of eligibility for such permit or probationary license issued to such person by the court in which he or she was convicted for not less than one year.

(B) Upon the expiration of such one-year ignition interlock device limited driving permit or habitual violator probationary license, the driver may, if otherwise qualified, apply for renewal of

such permit or probationary license without such ignition interlock device restriction.

(c) Each resident of this state who is required to have an ignition interlock device installed pursuant to this article shall report to the provider center every 30 days for the purpose of monitoring the operation of each required ignition interlock device. If at any time it is determined that a person has tampered with the device, the Department of Driver Services shall be given written notice within five days by the community supervision officer, the court ordering the use of such device, or the interlock provider. If an ignition interlock device is found to be malfunctioning, it shall be replaced or repaired, as ordered by the court or the Department of Driver Services, at the expense of the provider.

(d)(1) If a person required to report to an ignition interlock provider as required by subsection (c) of this Code section fails to report to the provider as required or receives an unsatisfactory report from the provider at any time during the one-year period, the Department of Driver Services shall revoke such person's ignition interlock device limited driving permit immediately upon notification from the provider of the failure to report or failure to receive a satisfactory report. Except as provided in paragraph (2) of this subsection, within 30 days after such revocation, the person may make a written request for a hearing and remit to the Department of Driver Services a payment of $250.00 for the cost of the hearing. Within 30 days after receiving a written request for a hearing and a payment of $250.00, the Department of Driver Services shall hold a hearing as provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The hearing shall be recorded.

(2) Any person whose ignition interlock device limited driving permit was revoked on or before July 1, 2004, for failure to report or failure to receive a satisfactory report may make a written request for a hearing and remit to the Department of Driver Services a payment of $250.00 for the cost of the hearing. Within 30 days after receiving a written request for a hearing and a payment of $250.00, the Department of Driver Services shall hold a hearing as provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The hearing shall be recorded.

(3) If the hearing officer determines that the person failed to report to the ignition interlock provider for any of the reasons specified in this paragraph, the Department of Driver Services shall issue a new ignition interlock device limited driving permit that shall be valid for a period of one year to such person. Such reasons shall be for providential cause and shall include, but not be limited to, the following:

(A) Medical necessity, as evidenced by a written statement from a medical doctor;

(B) The person was incarcerated;

(C) The person was required to be on the job at his or her place of employment, with proof that the person would be terminated if he or she was not at work; or

(D) The vehicle with the installed interlock device was rendered inoperable by reason of collision, fire, or a major mechanical failure.

(4) If the hearing officer determines that the person failed to report to the ignition interlock provider for any reason other than those specified in paragraph (3) of this subsection, or if the person received an unsatisfactory report from the provider, after the expiration of 120 days the person may apply to the Department of Driver Services and the Department of Driver Services shall issue a new ignition interlock device limited driving permit to such person.

(5) This subsection shall not apply to any person convicted of violating Code Section 42-8-118. (Code 1981, § 42-8-112, enacted by Ga. L. 1993, p. 568, § 1; Ga. L. 2000, p. 1457, § 6; Ga. L. 2001, p. 208, § 1-9; Ga. L. 2002, p. 415, § 42; Ga. L. 2003, p. 796, § 8; Ga. L. 2004, p. 604, § 1; Ga. L. 2005, p. 60, § 42/HB 95; Ga. L. 2005, p. 334, § 24-5/HB 501; Ga. L. 2012, p. 72, § 7/SB 236; Ga. L. 2013, p. 878, § 4/HB 407; Ga. L. 2014, p. 710, § 1-20/SB 298; Ga. L. 2015, p. 5, § 42/HB 90; Ga. L. 2015, p. 60, § 5-1/SB 100; Ga. L. 2015, p. 422, § 5-73/HB 310.)

The 2015 amendments. — The first 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted "probationary license" for "permit" in subparagraph (b)(2)(A). The second 2015 amendment, effective July 1, 2015, substituted "subparagraph (c)(2)(C)" for "subparagraph (b)(2)(C)" near the middle of paragraph (a)(1). See editor's note for applicability. The third 2015 amendment, effective July 1, 2015, substituted "community supervision" for "probation" in the second sentence of subsection (c); in subsection (d), substituted "Department of Driver Services" for "department" throughout. See editor's note for applicability. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides, in part, that this Act shall apply to offenses which occur on or after July 1, 2015.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-114. Specifying provider for ignition interlock device.

(a) No judicial officer, community supervision officer, law enforcement officer, or other officer or employee of a court; person who owns, operates, or is employed by a private company which has contracted to

provide private probation services for misdemeanor cases; or professional bondsman or agent or employee thereof shall specify, directly or indirectly, a particular provider center which the person may or shall utilize when use of an ignition interlock device is required. This subsection shall not prohibit any judicial officer, community supervision officer, law enforcement officer, or other officer or employee of a court; owner, operator, or employee of a private company which has contracted to provide probation services for misdemeanor cases; or professional bondsman or agent or employee thereof from furnishing any person, upon request, the names of certified provider centers.

(b) No person who owns, operates, or is employed by a private company which has contracted to provide probation services for misdemeanor cases or professional bondsman or agent or employee thereof shall be authorized to own, operate, or be employed by a provider center. (Code 1981, § 42-8-114, enacted by Ga. L. 1993, p. 568, § 1; Ga. L. 2000, p. 1457, § 6; Ga. L. 2015, p. 422, § 5-76/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "community supervision" for "probation" twice in subsection (a). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-8-116. Warning labels.

The providers certified by the Department of Driver Services shall design and adopt pursuant to regulations of such department a warning label which shall be affixed to each ignition interlock device upon installation. The label shall contain a warning that any person tampering, circumventing, or otherwise misusing the device is guilty of a misdemeanor and may be subject to civil liability. (Code 1981, § 42-8-116, enacted by Ga. L. 1993, p. 568, § 1; Ga. L. 2000, p. 1457, § 6; Ga. L. 2002, p. 415, § 42; Ga. L. 2005, p. 334, § 24-7/HB 501; Ga. L. 2015, p. 422, § 5-77/HB 310.)

The 2015 amendment, effective July 1, 2016, substituted "such department" for "the department" in the first sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

ARTICLE 8

DIVERSION CENTER AND PROGRAM

42-8-130. Establishment; obligations of respondent; confinement; fee; alternative methods of incarceration.

Repealed by Ga. L. 2015, p. 422, § 5-79, effective July 1, 2015.

Editor's notes. — This article was based on Code 1981, § 42-8-130, enacted by Ga. L. 1996, p. 649, § 3.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

ARTICLE 9

PROBATION MANAGEMENT

42-8-150 through 42-8-159.

Repealed by Ga. L. 2015, p. 422, § 1/HB 310, effective July 1, 2015.

Editor's notes. — This article was based on Code 1981, §§ 42-8-150 through 42-8-159, enacted by Ga. L. 2009, p. 32, § 1/SB 24.

Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

CHAPTER 9

PARDONS AND PAROLES

Article 1

General Provisions

Sec.

Article 2

Grants of Pardons, Paroles, and Other Relief

ARTICLE 1

GENERAL PROVISIONS

42-9-3. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Pardons and Paroles.

(2) "Community supervision officer" means a person who supervises probationers or parolees for the department.

(3) "Department" means the Department of Community Supervision.

(4) "Split sentence" means any felony sentence that includes a term of imprisonment followed by a term of probation. (Ga. L. 2015, p. 422, § 5-81/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of this Code section for the former provisions which read: "As used in this chapter, the term 'board' means the State Board of Pardons and Paroles." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-9-9. Board employees.

The board may appoint such clerical, stenographic, supervisory, and expert assistants and may establish such qualifications for its employees as it deems necessary. In its discretion, the board may discharge such employees. (Ga. L. 1943, p. 185, § 9; Ga. L. 2008, p. 285, § 1/SB 502; Ga. L. 2013, p. 82, § 2/HB 482; Ga. L. 2015, p. 422, § 5-82/HB 310.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall

become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-9-20. General duties of board.

(a) In all cases in which the chairperson of the board or any other member designated by the board has suspended the execution of a death sentence to enable the full board to consider and pass on same, it shall be mandatory that the board act within a period not exceeding 90 days from the date of the suspension order. In the cases which the board has power to consider, the board shall be charged with the duty of determining which inmates serving sentences imposed by a court of this state may be released on pardon or parole and fixing the time and conditions thereof. The board shall also be charged with the duty of determining violations of parole and taking action with reference thereto and making such investigations as may be necessary. It shall be the duty of the board personally to study the cases of those inmates whom the board has power to consider so as to determine their ultimate fitness for such relief as the board has power to grant. The board by an affirmative vote of a majority of its members shall have the power to commute a sentence of death to one of life imprisonment.

(b) The board shall provide The Council of Superior Court Clerks of Georgia the data set forth in Code Section 15-12-40.1, without charge and in the electronic format requested. (Ga. L. 1943, p. 185, § 11; Ga. L. 1973, p. 1294, § 1; Ga. L. 1982, p. 3, § 42; Ga. L. 1983, p. 500, § 6; Ga. L. 2014, p. 451, § 14/HB 776; Ga. L. 2015, p. 422, § 5-83/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (a), substituted "chairperson" for "chairman" near the beginning and substituted "of determining violations of parole and taking action with reference thereto, and making such investigations as may be necessary" for "of supervising all persons placed on parole, of determining violations thereof and of taking action with reference thereto, of making such investigations as may be necessary, and of aiding parolees or probationers in securing employment" near the middle. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-9-20.1. Public access to information regarding paroled felons residing within state.

Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50 or any provisions of this chapter relating to the confidentiality of records, the State Board of Pardons and Paroles shall develop and implement a system whereby any interested citizen of this state shall be permitted to contact the board through an electronic calling system

or by other means and receive information relating to persons who have been convicted of a felony, who have been paroled, and whose current addresses are within the State of Georgia. With respect to each parolee, the board shall provide the parolee's name, sex, date of birth, current address, crime or crimes for which the parolee was convicted, and the beginning and ending dates of such person's parole. The board shall be authorized to charge a reasonable fee to cover the costs of providing such information. The board shall be authorized to promulgate rules and regulations to carry out the provisions of this Code section. (Code 1981, § 42-9-20.1, enacted by Ga. L. 1997, p. 915, § 1; Ga. L. 2015, p. 207, § 2/HB 71.)

The 2015 amendment, effective July 1, 2015, deleted the former third sentence, which read: "The board shall not release any information regarding a person who has previously been paroled and whose civil rights have been restored."

42-9-21. Supervision of persons placed on parole or other conditional release; contracts for services and programs; collection of sums for restitution.

(a) The department shall have the function and responsibility of supervising all persons placed on parole or other conditional release by the board.

(b) The department shall be authorized to maintain and operate or to enter into memorandums of agreement or other written documents evidencing contracts with other state agencies, persons, or any other entities for transitional or intermediate or other services or for programs deemed by the board to be necessary for parolees or others conditionally released from imprisonment by order of the board and to require as a condition of relief that the offender pay directly to the provider a reasonable fee for such services or programs.

(c) In all cases where restitution is applicable, the department shall collect during the parole period those sums determined to be owed to the victim. (Ga. L. 1977, p. 1209, § 1; Ga. L. 1992, p. 3221, § 9; Ga. L. 1996, p. 1097, § 1; Ga. L. 1998, p. 1376, § 1; Ga. L. 2015, p. 422, § 5-84/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsections (a) and (c), substituted "department" for "board"; and, in subsection (b), substituted "department shall be" for "board is" and "memorandums" for "memoranda" near the beginning, and substituted "such" for "said" near the end. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 5-91/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

ARTICLE 2

GRANTS OF PARDONS, PAROLES, AND OTHER RELIEF

42-9-41. Duty of board to obtain and place in records information respecting persons subject to relief or placed on probation; investigations; rules.

(a) It shall be the duty of the board to obtain and place in its permanent records information as complete as may be practicable on every person who may become subject to any relief which may be within the power of the board to grant. The information shall be obtained as soon as possible after imposition of the sentence and shall include:

(1) A complete statement of the crime for which the person is sentenced, the circumstances of the crime, and the nature of the person's sentence;

(2) The court in which the person was sentenced;

(3) The term of his sentence;

(4) The name of the presiding judge, the prosecuting officers, the investigating officers, and the attorney for the person convicted;

(5) A copy of presentence investigation and any previous court record;

(6) A fingerprint record;

(7) A copy of all probation reports which may have been made; and

(8) Any social, physical, mental, or criminal record of the person.

(b) The board in its discretion may also obtain and place in its permanent records similar information on each person who may be placed on probation. The board shall immediately examine such records and any other records obtained and make such other investigation as it may deem necessary. It shall be the duty of the court and of all community supervision officers and other appropriate officers to furnish to the board, upon its request, such information as may be in their possession or under their control. The Department of Behavioral Health and Developmental Disabilities and all other state, county, and city agencies, all sheriffs and their deputies, and all peace officers shall cooperate with the board and shall aid and assist it in the performance of its duties. The board may make such rules as to the privacy or privilege of such information and as to its use by persons other than the board and its staff as may be deemed expedient in the performance of its duties. (Ga. L. 1943, p. 185, § 12; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2015, p. 422, § 5-85/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "community supervision officers" for "probation officers" in the third sentence of subsection (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-9-42. Procedure for granting relief from sentence; conditions and prerequisites; public access to information; violation of parole.

(a) No person shall be granted clemency, pardon, parole, or other relief from sentence except by a majority vote of the board. A majority of the members of the board may commute a death sentence to life imprisonment, as provided in Code Section 42-9-20.

(b)(1) As used in this subsection, the term "serious offense" means:

(A) A serious violent felony as such term is defined in Code Section 17-10-6.1; or

(B) A felony offense of:

(i) False imprisonment in violation of Code Section 16-5-41 when the victim is not the child of the accused and the victim is less than 14 years of age;

(ii) Aggravated assault in violation of Code Section 16-5-21;

(iii) Aggravated battery in violation of Code Section 16-5-24;

(iv) Trafficking of persons for labor or sexual servitude in violation of Code Section 16-5-46;

(v) Cruelty to children in violation of Code Section 16-5-70;

(vi) Stalking in violation of Code Section 16-5-90;

(vii) Aggravated stalking in violation of Code Section 16-5-91;

(viii) Exploitation and intimidation of disabled adults, elder persons, and residents in violation of Code Section 16-5-102;

(ix) Sodomy in violation of Code Section 16-6-2;

(x) Statutory rape in violation of Code Section 16-6-3;

(xi) Child molestation in violation of Code Section 16-6-4;

(xii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(xiii) Sexual assault of certain persons in violation of Code Section 16-6-5.1;

(xiv) Incest in violation of Code Section 16-6-22;

(xv) Sexual battery in violation of Code Section 16-6-22.1;

(xvi) Burglary in violation of Code Section 16-7-1;

(xvii) Home invasion in violation of Code Section 16-7-5;

(xviii) Arson in violation of Code Section 16-7-60;

(xix) Possession, manufacture, transport, distribution, possession with the intent to distribute, or offering to distribute an explosive device in violation of Code Section 16-7-82;

(xx) Possessing, transporting, or receiving explosives or destructive devices with the intent to kill, injure, or intimidate individuals or destroy public buildings in violation of Code Section 16-7-88;

(xxi) Theft by receiving stolen property in violation of Code Section 16-8-7;

(xxii) Robbery in violation of Code Section 16-8-40;

(xxiii) Sexual exploitation of children in violation of Code Section 16-12-100;

(xxiv) Drug related objects in violation of Code Section 16-13-1;

(xxv) Approval by the federal Food and Drug Administration as prerequisite to certain sales in violation of Code Section 16-13-4;

(xxvi) Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana in violation of Code Section 16-13-30;

(xxvii) Licenses for sale, transfer, or purchase for resale of products containing pseudoephedrine; reporting and record-keeping requirements in violation of Code Section 16-13-30.4;

(xxviii) Possession of substances with intent to use or convey such substances for the manufacture of Schedule I or Schedule II controlled substances in violation of Code Section 16-13-30.5;

(xxix) Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine in violation of Code Section 16-13-31;

(xxx) Trafficking in ecstasy in violation of Code Section 16-13-31.1;

(xxxi) Transactions in drug related objects in violation of Code Section 16-13-32;

(xxxii) Transactions in drug related objects in violation of Code Section 16-13-32.1;

(xxxiii) Use of a communication facility in committing or facilitating commission of an act which constitutes a felony in violation of Code Section 16-13-32.3;

(xxxiv) Manufacturing, distributing, dispensing, or possessing controlled substances in, on, or near public or private schools in violation of Code Section 16-13-32.4;

(xxxv) Manufacturing, distributing, dispensing, or possessing controlled substances, marijuana, or counterfeit substances near a park or housing project in violation of Code Section 16-13-32.5;

(xxxvi) Manufacturing, distributing, dispensing, or possessing with intent to distribute controlled substances or marijuana in, on, or within a drug-free commercial zone in violation of Code Section 16-13-32.6;

(xxxvii) Unauthorized distribution and dispensation of a controlled substance in violation of Code Section 16-13-42;

(xxxviii) Unauthorized distribution of a controlled substance in violation of Code Section 16-13-43;

(xxxix) A violation of Article 3 of Chapter 13 of Title 16 involving dangerous drugs;

(xl) A violation of Chapter 14 of Title 16 involving racketeer influenced and corrupt organizations; or

(xli) Participating in gang activity in violation of Code Section 16-15-4.

(2) A grant of pardon, parole, or other relief from sentence shall be rendered only by a written decision which shall be signed by at least the number of board members required for the relief granted and which shall become a part of such individual's permanent record.

(3) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50 or any provisions of this chapter relating to the confidentiality of records, a written decision relating to a pardon for a serious offense or commutation of a death sentence shall:

(A) Include the board's findings which reflect the board's consideration of the evidence offered that supports the board's decision; and

(B) Be available for public inspection.

(c) Good conduct, achievement of a fifth-grade level or higher on standardized reading tests, and efficient performance of duties by an

inmate shall be considered by the board in his favor and shall merit consideration of an application for pardon or parole. No inmate shall be placed on parole until and unless the board shall find that there is reasonable probability that, if he is so released, he will live and conduct himself as a respectable and law-abiding person and that his release will be compatible with his own welfare and the welfare of society. Furthermore, no person shall be released on pardon or placed on parole unless and until the board is satisfied that he will be suitably employed in self-sustaining employment or that he will not become a public charge. However, notwithstanding other provisions of this chapter, the board may, in its discretion, grant pardon or parole to any aged or disabled persons.

(d)(1) Any person who is paroled shall be released on such terms and conditions as the board shall prescribe. The board shall diligently see that no peonage is allowed in the guise of parole relationship or supervision. The parolee shall remain in the legal custody of the board until the expiration of the maximum term specified in his or her sentence or until he or she is pardoned by the board.

(2) The board may require the payment of a parole supervision fee of at least $10.00 per month as a condition of parole or other conditional release. The monthly amount shall be set by rule of the board and shall be uniform state wide. The board may require or the parolee or person under conditional release may request that up to 24 months of the supervision fee be paid in advance of the time to be spent on parole or conditional release. In such cases, any advance payments are nonreimbursable in the event of parole or conditional release revocation or if parole or conditional release is otherwise terminated prior to the expiration of the sentence being served on parole or conditional release. Such fees shall be collected by the department to be paid into the general fund of the state treasury.

(e) If a parolee violates the terms of his parole, he shall be subject to rearrest or extradition for placement in the actual custody of the board, to be redelivered to any state or county correctional institution of this state. (Ga. L. 1943, p. 185, § 13; Ga. L. 1974, p. 474, § 1; Ga. L. 1975, p. 795, § 1; Ga. L. 1984, p. 775, § 1; Ga. L. 1985, p. 414, § 1; Ga. L. 1986, p. 1596, § 3; Ga. L. 2015, p. 207, § 3/HB 71; Ga. L. 2015, p. 422, § 5-86/HB 310.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, in subsection (b), designated the provisions as paragraph (2), added paragraphs (1) and (3); and, in paragraph (2), deleted "clemency," following "A grant of". The second 2015 amendment, effective July 1, 2015, inserted "or she" near the end of paragraph (d)(1), and substituted "department" for "board" near the end of paragraph (d)(2). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall

apply to sentences entered on or after such date."

42-9-43. Information to be considered by board generally; conduct of investigation and examination; determination as to grant of relief.

(a) The board, in considering any case within its power, shall cause to be brought before it all pertinent information on the person in question. Included therein shall be:

(1) A report by the superintendent, warden, or jailer of the jail or state or county correctional institution in which the person has been confined upon the conduct of record of the person while in such jail or state or county correctional institution;

(2) The results of such physical and mental examinations as may have been made of the person;

(3) The extent to which the person appears to have responded to the efforts made to improve his or her social attitude;

(4) The industrial record of the person while confined, the nature of his or her occupations while so confined, and a recommendation as to the kind of work he or she is best fitted to perform and at which he or she is most likely to succeed when and if he or she is released;

(5) The educational programs in which the person has participated and the level of education which the person has attained based on standardized reading tests;

(6) The written statements or oral testimony, if any, of the district attorney of the circuit in which the person was sentenced expressing views and making any recommendation as to a pardon for a serious offense, as such term is defined in Code Section 42-9-42, or commutation of a death sentence;

(7) The written, oral, audiotaped, or videotaped testimony of the victim, the victim's family, or a witness having personal knowledge of the victim's personal characteristics, including any information prepared by the victim or any individual offering or preparing information on behalf of the victim, for the purpose of the board's consideration of a pardon or commutation of a death sentence if the victim has provided such information to the board; and

(8) If the person is or was required to register pursuant to Code Section 42-1-12, any court order issued releasing the person from registration requirements or residency or employment restrictions.

(b)(1) As used in this subsection, the term:

(A) "Debilitating terminal illness" means a disease that cannot be cured or adequately treated and that is reasonably expected to result in death within 12 months.

(B) "Entirely incapacitated" means an offender who:

(i) Requires assistance in order to perform two or more necessary daily life functions or who is completely immobile; and

(ii) Has such limited physical or mental ability, strength, or capacity that he or she poses an extremely low risk of physical threat to others or to the community.

(C) "Necessary daily life function" means eating, breathing, dressing, grooming, toileting, walking, or bathing.

(2) The board may issue a medical reprieve to an entirely incapacitated person suffering a progressively debilitating terminal illness in accordance with Article IV, Section II, Paragraph II of the Constitution.

(c)(1) The board shall give at least 30 days' advance written notification to the district attorney of the circuit in which the person was sentenced whenever it considers making a final decision on a pardon for a serious offense, as such term is defined in Code Section 42-9-42, and shall provide the district attorney an opportunity to submit information and file a written objection to such action.

(2) Within 72 hours of receiving a request to commute a death sentence, the board shall provide written notification to the district attorney of the circuit in which the person was sentenced of the date set for hearing such request and shall provide the district attorney an opportunity to submit information and file a written response to such request.

(3) The board may also make such other investigation as it may deem necessary in order to be fully informed about the person.

(d)(1) Before releasing any person on parole, granting a pardon, or commuting a death sentence, the board may have the person appear before it and may personally examine him or her and consider any information it deems relevant or necessary. When objections to relief have been tendered, the board may hold a hearing and consider oral testimony. Upon consideration of the records, papers, documents, and oral testimony submitted, the board shall make its findings and determine whether or not such person shall be granted a pardon, parole, or other relief within the power of the board and determine the terms and conditions thereof.

(2) Notice of the board's determination shall be given to the person being considered, the correctional official having him or her in

custody, if applicable, the district attorney who submitted any information or objection, and the victim in accordance with Code Section 17-17-13.

(e) If a person in custody is granted a pardon or a parole, the correctional official having such person in custody, upon notification thereof, shall inform him or her of the terms and conditions thereof and shall, in strict accordance therewith, release the person. (Ga. L. 1943, p. 185, § 14; Ga. L. 1986, p. 1596, § 4; Ga. L. 2009, p. 192, § 2/SB 151; Ga. L. 2013, p. 222, § 19/HB 349; Ga. L. 2015, p. 207, § 4/HB 71.)

The 2015 amendment, effective July 1, 2015, in subsection (a), deleted "and" at the end of paragraph (a)(5); redesignated former paragraph (a)(6) as paragraph (a)(7) and added new paragraph (a)(6); in paragraph (a)(7), as redesignated, added", including any information prepared by the victim or any individual offering or preparing information on behalf of the victim, for the purpose of the board's consideration of a pardon or commutation of a death sentence if the victim has provided such information to the board; and" at the end; and added paragraph (a)(8); in subsection (c), designated the formerly existing provisions as paragraph (c)(3), and added paragraphs (c)(1) and (c)(2); substituted the present provisions of subsection (d) for the former provisions, which read: "Before releasing any person on parole, the board may have the person appear before it and may personally examine him or her. Thereafter, upon consideration the board shall make its findings and determine whether or not such person shall be granted a pardon, parole, or other relief within the power of the board; and the board shall determine the terms and conditions thereof. Notice of the determination shall be given to such person and to the correctional official having him or her in custody."; in subsection (e), inserted "in custody" near the beginning and substituted "official having such person" for "officials having the person" near the middle; and deleted former subsection (f), which read: "The board shall send written notification of the parole decision to the victim or, if the victim is no longer living, to the family of the victim."

42-9-44. Terms and conditions of parole; adoption of general and special rules; violation of parole; certain parolees to obtain high school diploma or general educational development (GED) diploma.

(a) The board, upon placing a person on parole, shall specify in writing the terms and conditions thereof. A certified copy of the conditions shall be given to the parolee. Thereafter, a copy shall be sent to the clerk of the court in which the person was convicted. The board shall adopt general rules concerning the terms and conditions of parole and concerning what shall constitute a violation thereof and shall make special rules to govern particular cases. The rules, both general and special, may include, among other things, a requirement that the parolee shall not leave this state or any definite area in this state without the consent of the board; that the parolee shall contribute to the support of his or her dependents to the best of the parolee's ability; that the parolee shall make reparation or restitution for his or her crime; that the parolee shall abandon evil associates and ways; and that the

parolee shall carry out the instructions of his or her community supervision officer, and, in general, so comport himself or herself as the parolee's officer shall determine. A violation of the terms of parole may render the parolee liable to arrest and a return to a penal institution to serve out the term for which the parolee was sentenced.

(b) Each parolee who does not have a high school diploma or a general educational development (GED) diploma shall be required as a condition of parole to obtain a high school diploma or general educational development (GED) diploma or to pursue a trade at a vocational or technical school. Any such parolee who demonstrates to the satisfaction of the board an existing ability or skill which does in fact actually furnish the parolee a reliable, regular, and sufficient income shall not be subject to this provision. Any parolee who is determined by the department or the board to be incapable of completing such requirements shall only be required to attempt to improve his or her basic educational skills. Failure of any parolee subject to this requirement to attend the necessary schools or courses or to make reasonable progress toward fulfillment of such requirement shall be grounds for revocation of parole. The board shall establish regulations regarding reasonable progress as required by this subsection. This subsection shall apply to paroles granted on or after July 1, 1995. (Ga. L. 1943, p. 185, § 15; Ga. L. 1995, p. 625, § 2; Ga. L. 2015, p. 422, § 5-87/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (a), substituted "community supervision officer" for "parole supervisor" and "officer" for "supervisor" near the end; in subsection (b), substituted "(GED) diploma" for "equivalency diploma (GED)" twice, and, in the second sentence, substituted "department" for "Department of Corrections" and substituted "his or her basic educational skills" for "their basic educational skills". See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-9-45. General rule-making power.

(a) The board may adopt and promulgate rules and regulations, not inconsistent with this chapter, touching all matters dealt with in this chapter, including, among others, the practice and procedure in matters pertaining to paroles, pardons, and remission of fines and bond forfeitures. The rules and regulations shall contain an eligibility requirement for parole which shall set forth the time when the automatic initial consideration for parole of inmates under the jurisdiction of the Department of Corrections shall take place and also the times at which periodic reconsideration thereafter shall take place. Such consideration shall be automatic, and no written or formal application shall be required.

(b)(1) An inmate serving a misdemeanor sentence or misdemeanor sentences shall only be eligible for consideration for parole after the expiration of six months of his or her sentence or sentences or one-third of the time of his or her sentence or sentences, whichever is greater.

(2) Except as otherwise provided in Code Sections 17-10-6.1 and 17-10-7 and paragraph (3) of this subsection, an inmate serving a felony sentence or felony sentences shall only be eligible for consideration for parole after the expiration of nine months of his or her sentence or one-third of the time of the sentences, whichever is greater. Except as otherwise provided in Code Sections 17-10-6.1 and 17-10-7 and paragraph (3) of this subsection, inmates serving sentences aggregating 21 years or more shall become eligible for consideration for parole upon completion of the service of seven years.

(3) When an inmate was sentenced pursuant to subsection (d) of Code Section 16-13-30 and subsection (c) of Code Section 17-10-7 to a term of at least 12 years and up to a life sentence, he or she may become eligible for consideration for parole if he or she:

(A) Has never been convicted of:

(i) A serious violent felony as such term is defined in Code Section 17-10-6.1;

(ii) An offense for which he or she was or could have been required to register pursuant to Code Section 42-1-12; provided, however, that this paragraph shall not apply to any felony that became punishable as a misdemeanor on or after July 1, 2006;

(iii) A violation of paragraph (1) or (2) of subsection (b) of Code Section 16-5-21;

(iv) A violation of Code Section 16-11-106; and

(v) A violation of Code Section 16-11-131;

(B) Has completed at least 12 years of his or her sentence;

(C) Has obtained a low-risk for recidivism rating as determined by a validated risk assessment instrument approved by the Department of Corrections;

(D) Has been classified as a medium or less than medium security risk for institutional housing classification purposes by the Department of Corrections;

(E) Has completed all criminogenic programming requirements as determined by a validated risk assessment instrument approved by the Department of Corrections;

(F) In the 12 months preceding consideration, has not been found guilty of any serious disciplinary infractions; and

(G) Has a high school diploma or general educational development (GED) diploma, unless he or she is unable to obtain such educational achievement due to a learning disability or illiteracy. If the inmate is incapable of obtaining such education, he or she shall have completed a job skills training program, a literacy program, an adult basic education program, or a faith based program.

(c) The board shall adopt rules and regulations governing the granting of other forms of clemency, which shall include pardons, reprieves, commutation of penalties, removal of disabilities imposed by law, and the remission of any part of a sentence, and shall prescribe the procedure to be followed in applying for them. Applications for the granting of such other forms of clemency and for exceptions to parole eligibility rules established by statute or promulgated by the board shall be made in such manner as the board shall direct by rules and regulations.

(d) All rules and regulations adopted pursuant to this Code section shall be adopted, established, promulgated, amended, repealed, filed, and published in accordance with the applicable provisions and procedure as set forth in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The courts shall take judicial notice of the rules and regulations.

(e) For the purposes of this Code section, the words "rules and regulations" shall have the same meaning as the word "rule," as defined in Code Section 50-13-2, except that the words "rules and regulations" shall not be construed to include the terms and conditions prescribed by the board to which a person paroled by the board may be subjected.

(f) Except to correct a patent miscarriage of justice and not otherwise, no inmate serving a sentence imposed for any of the crimes listed in this subsection shall be granted release on parole until and unless said inmate has served on good behavior seven years of imprisonment or one-third of the prison term imposed by the sentencing court for the violent crime, whichsoever first occurs. No inmate serving a sentence for any crime listed in this subsection shall be released on parole for the purpose of regulating jail or prison populations. This subsection shall govern parole actions in sentences imposed for any of the following crimes: voluntary manslaughter, statutory rape, incest, cruelty to children, arson in the first degree, homicide by vehicle while under the influence of alcohol or as a habitual traffic violator, aggravated battery, aggravated assault, trafficking in drugs, and violations of Chapter 14 of Title 16, the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act."

(g) No inmate serving a sentence for murder, murder in the second degree, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual battery shall be released on parole for the purpose of regulating jail or prison populations.

(h) An inmate whose criminal offense or history indicates alcohol or drug involvement shall not be considered for parole until such inmate has successfully completed an Alcohol or Drug Use Risk Reduction Program offered by the Department of Corrections.

(i) An inmate who has committed an offense which has been identified to involve family violence as such term is defined in Code Section 19-13-1 shall not be released on parole until such inmate has successfully completed a Family Violence Counseling Program offered by the Department of Corrections. (Ga. L. 1943, p. 185, § 23; Ga. L. 1964, p. 487, § 1; Ga. L. 1969, p. 948, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1991, p. 94, § 42; Ga. L. 1992, p. 3221, § 10; Ga. L. 1994, p. 1959, § 15; Ga. L. 1995, p. 625, § 3; Ga. L. 1996, p. 1113, § 3; Ga. L. 2014, p. 444, § 2-12/HB 271; Ga. L. 2015, p. 519, § 2-2/HB 328; Ga. L. 2015, p. 693, § 3-32/HB 233.)

The 2015 amendments. — The first 2015 amendment, effective July 5, 2015, in subsection (b), inserted paragraph (b)(1) and (b)(2) designations, in paragraph (b)(2), inserted "and paragraph (3) of this subsection" twice, and added paragraph (b)(3). See editor's note for applicability. The second 2015 amendment, effective July 1, 2015, substituted "fines and bond forfeitures" for "fines and forfeitures" at the end of the first sentence of subsection (a).

Editor's notes. — Ga. L. 2015, p. 519, § 2-2(b)/HB 328, not codified by the General Assembly, provides, in part, that this Act shall be given retroactive effect to those sentences imposed before May 5, 2015, of Part II of this Act."

42-9-46. Cases in which inmate has failed to serve time required for automatic initial consideration.

Notwithstanding any other provisions of law to the contrary, if the board is to consider any case in which an inmate has failed to serve the time required by law for automatic initial consideration, the board shall notify in writing, at least ten days prior to consideration, the sentencing judge, the district attorney of the county in which the person was sentenced, and any victim of crimes against the person or, if such victim is deceased, the spouse, children, or parents of the deceased victim if such person's contact information is provided pursuant to Code Section 17-17-13. The sentencing judge, district attorney, or victim or, if such victim is deceased, the spouse, children, or parents of the deceased victim may appear at a hearing held by the board or make a written statement to the board expressing their views and making their recommendation as to whether the person should be paroled. (Ga. L. 1972, p. 410, § 1; Ga. L. 1975, p. 793, § 1; Ga. L. 1990, p. 1001, § 1; Ga. L. 2015, p. 207, § 5/HB 71.)

The 2015 amendment, effective July 1, 2015, substituted "person's contact information is provided pursuant to Code Section 17-17-13" for "person's name and address are provided on the impact statement pursuant to Code Section 17-10-1.1" near the end of the first sentence.

42-9-47. Notification of decision to parole inmate.

Within 72 hours after the board reaches a final decision to parole an inmate, the district attorney, the presiding judge, the sheriff of each county in which the inmate was tried, convicted, and sentenced, the local law enforcement authorities of the county of the last residence of the inmate prior to incarceration, and the victim of crimes against the person shall be notified of the decision by the chairman of the board. Such notice to the victim shall be mailed or e-mailed to the victim's address if such information is provided pursuant to Code Section 17-17-13. Failure of the victim to inform the board of a change of address shall not void a parole date set by the board. (Ga. L. 1980, p. 393, § 3; Ga. L. 1985, p. 739, § 2; Ga. L. 2015, p. 207, § 6/HB 71.)

The 2015 amendment, effective July 1, 2015, substituted "mailed or e-mailed to the victim's address if such information is provided pursuant to Code Section 17-17-13." for "mailed to the victim's address provided for in subsection (c) of Code Section 17-10-1.1." at the end of the second sentence; and substituted "Failure of the victim" for "Failure of the prosecuting attorney to provide an address of the victim or failure of the victim" in the last sentence.

42-9-48. Arrest of parolee or conditional release violator.

(a) If any member of the board shall have reasonable ground to believe that any parolee or conditional releasee has lapsed into criminal ways or has violated the terms and conditions of his parole or conditional release in a material respect, the member may issue a warrant for the arrest of the parolee or conditional releasee.

(b) The warrant, if issued by a member or the board, shall be returned before the board and shall command that the alleged violator of parole or conditional release be brought before the board for a final hearing on revocation of parole or conditional release within a reasonable time after the preliminary hearing provided for in Code Section 42-9-50.

(c) All officers authorized to serve criminal process, all peace officers of this state, and all employees of the department whom the commissioner of community supervision specifically designates in writing shall be authorized to execute the warrant.

(d) Any community supervision officer, when he or she has reasonable ground to believe that a parolee or conditional releasee has violated the terms or conditions of his or her parole or conditional release in a material respect, shall notify the board or some member

thereof; and proceedings shall thereupon be had as provided in this Code section. (Ga. L. 1943, p. 185, § 16; Ga. L. 1965, p. 478, § 1; Ga. L. 1970, p. 187, § 1; Ga. L. 1975, p. 786, § 1; Ga. L. 1979, p. 1020, § 1; Ga. L. 2015, p. 422, § 5-88/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (c), substituted "department whom the commissioner of community supervision" for "board"; and, in subsection (d), substituted "community supervision officer, when he or she" for "parole supervisor, when he" near the beginning and inserted "or her" near the middle. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-9-53. Preservation of documents; classification of information and documents; divulgence of confidential state secrets; conduct of hearings.

(a) Subject to other laws, the board shall preserve on file all documents on which it has acted in the granting of pardons, paroles, and other relief.

(b)(1) All information, both oral and written, received by the members of the board in the performance of their duties under this chapter and all records, papers, and documents coming into their possession by reason of the performance of their duties under this chapter shall be classified as confidential state secrets until declassified by the board; provided, however, that the board shall be authorized to disclose to an alleged violator of parole or conditional release the evidence introduced against him or her at a final hearing on the matter of revocation of parole or conditional release.

(2) The department may make supervision records of the department available to officials employed with the Department of Corrections and the Sexual Offender Registration Review Board, provided that the same shall remain confidential and not available to any other person or subject to subpoena unless declassified by the commissioner of community supervision.

(c) No person shall divulge or cause to be divulged in any manner any confidential state secret. Any person violating this Code section or any person who causes or procures a violation of this Code section or conspires to violate this Code section shall be guilty of a misdemeanor.

(d) All hearings required to be held by this chapter shall be public, and the transcript thereof shall be exempt from subsection (b) of this Code section. All records and documents which were public records at the time they were received by the board are exempt from subsection (b) of this Code section. All information, reports, and documents required

by law to be made available to the General Assembly, the Governor, or the state auditor are exempt from subsection (b) of this Code section. (Ga. L. 1943, p. 185, § 20; Ga. L. 1953, Nov.-Dec. Sess., p. 210, § 1; Ga. L. 1975, p. 786, § 4; Ga. L. 1982, p. 3, § 42; Ga. L. 2011, p. 620, § 2/SB 214; Ga. L. 2013, p. 1056, § 2/HB 122; Ga. L. 2015, p. 207, § 7/HB 71; Ga. L. 2015, p. 422, § 5-89/HB 310.)

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, rewrote subsection (b). The second 2015 amendment, effective July 1, 2015, rewrote subsection (b). See editor's note for applicability. See Code Commission note regarding the effect of these amendments.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, the amendment of subsection (b) of this Code section by Ga. L. 2015, p. 207, § 7/HB 71, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 422, § 5-89/HB 310, due to irreconcilable conflict.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

42-9-57. Effect of chapter on probation power of courts; cooperation by board with the department.

Nothing contained in this chapter shall be construed as repealing any power given to any court of this state to place offenders on probation or to provide for terms of offender supervison. The board shall be authorized to cooperate with the department, except that it shall not assume or pay any financial obligations thereof. (Ga. L. 1943, p. 185, § 22; Ga. L. 1994, p. 97, § 42; Ga. L. 2015, p. 422, § 5-90/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of this Code section for the former provisions which read: "Nothing contained in this chapter shall be construed as repealing any power given to any court of this state to place offenders on probation or to supervise the same nor any power of any probation agency set up in any county of the state in conjunction with the courts. The board shall be authorized to cooperate with any such agencies, except that it shall not assume or pay any financial obligations thereof. The board shall also be authorized to cooperate with the courts for the probation of offenders in those counties in which there is no existing probation agency, when a court so requests." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

ARTICLE 4

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

42-9-80. Short title.

JUDICIAL DECISIONS

Cited in Owens v. Urbina, 296 Ga. 256, 765 S.E.2d 909 (2014).

ARTICLE 5

FEES

42-9-90. Application fee required for transfer consideration.

(a) As used in this Code section, the term:

(1) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(2) "Offender" means an adult placed under, or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(3) "State" means a state of the United States, the District of Columbia, or any other territorial possessions of the United States.

(b) The department and the State Board of Pardons and Paroles shall be authorized to require any nonindigent adult offender to pay a $25.00 application fee when applying to transfer his or her supervision from Georgia to any other state or territory pursuant to the provisions of Articles 3 and 4 of this chapter. (Code 1981, § 42-9-90, enacted by Ga. L. 2003, p. 477, § 1; Ga. L. 2015, p. 422, § 5-91/HB 310.)

The 2015 amendment, effective July 1, 2015, substituted "The department and the State Board of Pardons and Paroles shall be" for "The Department of Corrections and the State Board of Pardons and Paroles are" at the beginning of subsection (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date."

CHAPTER 12

PRISON LITIGATION REFORM

42-12-1. Short title.

JUDICIAL DECISIONS

Cited in Owens v. Hill, 295 Ga. 302, 758 S.E.2d 794 (2014).